



NZSTA
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Governance support resources

Board relationships and conflict resolution

While the majority of board members do a wonderful job and act appropriately, occasionally a member 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.

While a board member 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.

Code of conduct

It is important for the board to discuss how each member sees their role, responsibilities, and power. This often helps to clarify responsibilities, accountabilities and expectations. Once these are clear the board should be able to develop an agreed code of conduct for its members. An example of a Board code of conduct can be found in the [NZSTA Governance framework](#) - policy- B2.

Additionally, [section 166](#) of The Education and Training Act 2020 allows the Minister of Education, by notice in the gazette, to issue a code of conduct for members of school boards. All board members will be required to comply with this code and, before issuing it the Minister must follow a consultation process. To date, no such code has been issued and currently there is no legislated code of conduct for board members.

It is necessary for a board to clearly define who has the authority to act on its behalf

This is done by formal, written delegation. Delegations should be recorded in a regularly updated delegations list. If all the powers of staff and board members are recorded individuals become acutely aware of the need to only act within the scope given by the board. An example delegations list can also be found in the NZSTA Governance framework-A4.

In extreme cases where board members go outside the bounds of acceptable behaviour or outside the scope of their authority the board may address the matter directly

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

- The presiding member may have an informal "cup of coffee" conversation with the individual board member concerned. As with any issue, it is best to try and resolve matters at the lowest level possible and often the board member involved may not be aware their individual actions are putting the school board at risk
- An informal discussion may be held with the whole board about the scope of accepted behaviour. This brings issues out into the open and helps all the board understand what is

expected of them

- A board may resolve that no board member has power outside that recorded as being delegated by the board. This may accompany a general discussion on the topic
- A motion may be put setting out a topic or topics (e.g. a current personal grievance case) that individual board members are not to discuss or seek advice on without the board's approval
- A board may resolve to revoke powers or functions that have been delegated
- 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 board member who has an obvious conflict of interest or ulterior agenda will not acknowledge that they are putting the board at risk
- The board may also, by resolution, censure a member. This has no particular effect but is a political tool and is also useful in confirming that the board does not agree with one member's actions

Additionally, [section 169](#) of the Education and Training Act 2020 sets out possible sanctions for failure to comply with any code of conduct (yet to be) issued by the Minister. These include removal of the member from the board by the Minister.

Bad Faith

Members of school boards are not usually personally liable for their actions as a board member. [Section 151](#) of the Education and Training Act 2020 sets out the law on board members' liability

A board member is not personally liable for any act done or omitted by the board, or any loss to the board arising out of any act done or omitted by the board member **only if** the act or omission was (as far as the board member's involvement is concerned) in good faith in the performance or intended performance of the functions of the board.

Board members that act in "bad faith" could expect to be found liable for their actions. For example, a board member 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.

Board members that operate on behalf of the board without being delegated the power to do so could also be liable. For example if a board member 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 they 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 board member spreads gossip about matters dealt with by the board to people in the community.



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

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