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Jun 22

~~{See POLICY ALERT No. 228}~~

0163 QUORUM

A quorum of the **Board of Education** shall consist of a **minimum of five (5)** Board members, and no business shall be conducted in the absence of a quorum, except when the Doctrine of Necessity is invoked.

All Board meetings shall be called to commence not later than **8:00 p.m. of the designated day but, if in the event** a quorum is not present at the time for which the meeting is called, the Board member or Board members present hour of convening, the meeting may be recessed **recess the meeting** to a time not later than 9:00 p.m. of the same day; and, if a quorum **be-is not present at that time, is not then present**, the member or members present may adjourn the meeting to **commence not later than 8:00 p.m. of another day, but not more than seven days following the date for which the original meeting was called, but no further recess or adjournment of the meeting shall be made a later date within seven days.**

The Board of Education recognizes that there may be matters that come before the Board or acts required of Board members in their official capacity where the Board member may have a conflict of interest or the act by a **Board member** would be in violation of N.J.S.A. 18A:12-24. In these matters, the Board member(s) shall will remove **themselves himself/herself** from any discussions, meetings (informal or formal), committee meetings, and/or a vote regarding the matter. The Board will consider this matter without the Board member(s) who has the conflict.

In the event a matter comes before the Board or an act is required of a Board member in **their his/her** official capacity that is a conflict or would be in violation of N.J.S.A. 18A:12-24, the Board would still be required to have a quorum to consider the matter. However, the New Jersey Department of Education and the School Ethics Commission has envisioned this prohibition could create a situation in which **the number of conflicted Board members would prevent so many Board members have a conflict, that the Board would be unable** to take action on a matter. Therefore, when more than a quorum of the Board members must abstain from voting on a matter **due to a conflict or the act would be in violation of N.J.S.A. 18A:12-24**, the Board will invoke the Doctrine of Necessity consistent with the New Jersey Department of Education and School Ethics Commission guidelines as follows:



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A. Board Member(s) in Conflict - Less Than a Majority of The Board

1. In the event a Board member(s) has a conflict of interest where the Board member will act in **their his/her** official capacity, the Board member must remove **themselves himself/herself** from any discussions, meetings (informal or formal), committee meetings, and/or a vote regarding the matter.
2. In the event a Board member is unsure whether **they he/she** or any other Board member has a conflict of interest or whether the matter, if acted upon by a Board member(s) is in violation of N.J.S.A. 18A:12-24 - Prohibited Acts, the School Board Attorney will make a determination.
3. The School Board Attorney will provide the Board of Education an opinion on whether the matter is a conflict of interest or act prohibited by N.J.S.A. 18A:12-24 - Prohibited Acts.
4. If the Board member(s) believes **they he/she have** has a conflict of interest where **they he/she** will act in **their his/her** official capacity or if the School Board Attorney renders an opinion ~~that~~ the Board member has a conflict of interest where the Board member will act in **their his/her** official capacity, the Board member will remove **themselves himself/herself** from any discussions, meetings (informal or formal), committee meetings, and/or a vote regarding the matter.

B. **Board Member(s) in Conflict** - A Majority of Board Members in Conflict

1. In the event:
 - a. A Board member(s) believes **they he/she have** has a conflict of interest **or if acted upon by a Board member is in violation of N.J.S.A. 18A:12-24** ~~where he/she will act in his/her official capacity;~~ or
 - b. If the School Board Attorney renders an opinion ~~that the~~ a Board member(s) has a conflict of interest **or if acted upon by a Board member is in violation of N.J.S.A. 18A:12-24** ~~where the Board member will act in his/her official capacity;~~ and



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- c. The number of Board members that have a conflict would make it so the Board would be unable to take action on the matter, then the Board may invoke the “~~Rule [or Doctrine]~~ of Necessity.” (Citing U.S. v. Will, 449 U.S. 200 (1980)).

C. ~~Rule [Or Doctrine]~~ Of Necessity

1. The Doctrine of Necessity may be invoked when more than a quorum of the Board must abstain from voting on a matter.
2. There are three prerequisites necessary for a Board to invoke the Doctrine of Necessity:
 - a. The Board must be unable to act without the members in conflict taking part;
 - b. There must be a pressing need for action, i.e. the matter cannot be laid aside until another date; and
 - c. There can be no alternative forum that can grant the same relief.

~~(Allen v. Toms River Regional Board of Education, 233 N.J. Super 651 (Law Division 1989)).~~

3. When the School Board Attorney advises the Board the Doctrine of Necessity must be invoked in order to obtain a quorum on a vote, the Board must **publicly state:** ~~announce that it is invoking the Doctrine.~~
 - a. **That it is invoking the Doctrine of Necessity;** ~~The announcement must include the reason the Board must invoke the Doctrine of Necessity including stating the nature of each Board members conflict.~~
 - b. **The specific reason/purpose for which the Doctrine of Necessity is being invoked;** ~~and The announcement will be in writing and should be recorded in the minutes of the meeting by the Board Secretary at the point when the vote takes place.~~



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- c. **The specific nature of the conflict of interest for each Board member that has a conflict of interest: ~~It is enough for the Board to announce it is invoking the Doctrine and a Board Resolution is not required.~~**
- (1) **The specific nature of the conflict of interest for each Board member should include the Board member's name; the name of the immediate family member or relative which is the basis for the conflict of interest, and the position that immediate family member or relative holds; or**
 - (2) **If the specific nature of the conflict of interest for a Board member is a conflict other than an immediate family member or relative, the announcement should include the conflict which is the basis for the conflict of interest.**
4. **When the Board invokes the Doctrine of Necessity, it will adopt a Resolution setting forth the same information as outlined in C.3. above.**
54. **When the Board invokes the Doctrine of Necessity, the Resolution will be:**
- a. **Read at a regularly scheduled public meeting;**
 - b. **Posted in such places the Board posts public notices for thirty days; and**
 - c. **Provided to the School Ethics Commission ~~When the Board announces the Doctrine of Necessity is being invoked, the details, parameters and/or other pertinent facts of the matter to be voted should be revealed on an agenda for the public meeting in which the matter is to be voted upon.~~**



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65. The Board members who have a conflict in the matter are prohibited from:
- a. Participating in any discussions on the matter prior to the announcement **of the invocation of the Doctrine of Necessity at the** and public meeting; and
 - b. **Being present in an executive session when the matter is being discussed** ~~From entering an executive session in order to discuss the merits of the matter or contract; and~~
 - c. ~~From~~ **Offering** their opinions on the matter at any time prior to the announcement **or the invocation of the Doctrine of Necessity** and public meeting.
- ~~6. The Board members who have a conflict in the matter may only participate to the extent they may vote after the motion to approve and/or ratify the matter has been made and seconded and the Doctrine of Necessity has been thoroughly explained to the public.~~
7. **The** Board members **who have a** ~~in~~ conflict may only ask questions regarding the matter to be voted on in public and after the Board has invoked the Doctrine of Necessity.
8. **The** Board members **who have a** ~~in~~ conflict may explain their reasons for not voting just before the vote.

N.J.S.A. **18A:10-6**; 18A:12-24

New Jersey School Ethics Commission – Advisory Opinions A10-93(b), and A07-94, and C07-96

New Jersey School Ethics Commission – Resolution on Invoking the Doctrine of Necessity – June 25, 2018

Adopted: 14 September 2021

Revised/Readopted: _____, 2022

