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## 0163 QUORUM

A quorum of the **Board of Directors** shall consist of ~~half the total number of~~ a **minimum of 8** 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 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 Commission 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:

### 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

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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
  - 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; and

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- 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.~~
  - 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;**

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- 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.~~
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: June 27, 2001

**Revised:**