



**EDUCATION REVIEW OFFICE**  
Te Tari Arotake Mātauranga

## Guidelines for Board Assurance Statement and Self-Audit Checklists

Education Review Office

P O Box 2799

WELLINGTON

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# Ko te Tamaiti te Pūtake o te Kaupapa The Child – The Heart of the Matter

## Introduction

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**The Education and Training Act 2020<sup>1</sup>** states that:

*The purpose of this Act is to establish and regulate an education system that—*

*(a) provides New Zealanders and those studying in New Zealand with the skills, knowledge, and capabilities that they need to fully participate in the labour market, society, and their communities; and*

*(b) supports their health, safety, and well-being; and*

*(c) assures the quality of the education provided and the institutions and educators that provide and support it; and*

*(d) honours Te Tiriti o Waitangi and supports Māori-Crown relationships*

This legal framework provides a baseline for all boards in order to promote high quality outcomes for all students.

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## High Quality Evaluation Contributing to High Quality Education

### Compliance Issues

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ERO places reliance on the information given by boards and principals as to whether or not they are taking all reasonable steps to meet their legal obligations.

To assist schools, ERO has developed these guidelines for the Board Assurance Statement and the Self-Audit Checklists<sup>2</sup>.

Note: These Guidelines do not cover every legal requirement with which boards must comply, and include best-practice compliance. Information in the Guidelines does not represent the official version of Acts, Regulations and other legal requirements. In any situation the full legislation should be referred to at - [www.legislation.govt.nz](http://www.legislation.govt.nz)

***The Self-Audit Checklists<sup>3</sup> are part of the board’s self-review process. Boards should seek professional advice especially in the application of the health and safety at work legislation. If any significant issues or risks are identified under any sections of the Self-Audit Checklists, these will be discussed during the review and referred to other agencies as appropriate.***

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<sup>1</sup> Section 4 Education and Training Act 2020

<sup>2</sup> This is a separate document designed for school boards, Whanau and Te Poumaruru that can be downloaded from – [www.ero.govt.nz](http://www.ero.govt.nz)

<sup>3</sup> Ibid

## Section One – Board Administration Compliance Guide

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### Key Legislation

- Education and Training Act 2020<sup>4</sup>
  - Education Act 1989 [Some provisions continue to apply as [Saving provisions](#)]
  - Crown Entities Act 2004
  - Human Rights Act 1993
  - Local Government Official Information and Meetings Act 1987 (Part VII)
  - Education (School Boards) Regulations 2020
  - Official Information Act 1982
  - Privacy Act 2020
  - Public Records Act 2005
  - Public Services Act 2020
  - Education (School Attendance) Regulations 1951
  - Health (Immunisation) Regulations 1995
  - Copyright Act 1994
- 

### Education and Training Act 2020<sup>5</sup>

The Act consolidates legislation into a single statute by replacing the Education Acts 1964 and 1989, Parts 7, 7A and 7B of the State Sector Act 1988, and those provisions of the Education (Update) Amendment Act 2017 that are subject to delayed commencement.

#### ***Primary and secondary schooling***

The Act clarifies that the right to a free State education includes the right for enrolled students to attend the school in which they are enrolled for all the hours that the school is open for instruction. This will help those students not currently supported by their school to attend full-time, to realise that aspect of their right to education. It will also improve New Zealand's compliance with related international obligations. It will be possible at the request of the parents for a student's parents, the school principal, and the Secretary for Education to agree to vary a student's hours of attendance as part of a non-renewable transition attendance plan of no more than six months duration. This is intended to meet concerns that this change will disadvantage those students whose families consider that their needs are best met by attending school for fewer hours. The transition plan must be considered by all parties involved to be in the child's best interests.

The Act's structure also locates the different aspects of the right to a free State education, and related board duties and obligations, in one Part of the Act (Part 3) to make it easier for students and their whānau to understand and realise these rights.

#### ***School governance***

Several amendments give effect to the Government's aim of strengthening school governance and improving transparency and accountability. The objectives for school boards of trustees under the 1989 Act have been revised to—

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<sup>4</sup> Refer Education and Training Act 2020 and [More information on all the changes in the Act](#)

<sup>5</sup> For the purposes of these Guidelines referred to as the E&T Act or the Act  
Guidelines for Board Assurance Statement and Self-Audit Checklist  
Education Review Office January 2022

- ensure school governance is underpinned by Te Tiriti o Waitangi and relevant student rights:
- refocus boards on a wider range of objectives so that educational achievement is no longer the only primary objective—the Bill proposes that it is one of four primary objectives:
- make it clear to boards what they have to do in order to meet the revised objectives.

To assist boards in meeting their objectives and carrying out their functions and duties effectively, the Act enables the Minister to issue a mandatory national code of conduct for boards, backed up with the remedies of censure and removal from the board, where a member repeatedly and or significantly fails to comply with the minimum standards set out in the code of conduct. The code will apply to all board members, but the remedies will not apply to school principals. The code has been made a disallowable instrument to provide for external scrutiny through the Regulations Review Committee. The code’s status is also consistent with the approach taken to the Code of Conduct for teachers.

The Act also introduces a requirement for boards to consult their students (as appropriate), staff and school when making bylaws (**rules**). As well as bringing boards into line with other entities empowered to make bylaws, it will also enable greater staff, student, and community engagement with key governance decisions that may significantly impact them.

### ***Treaty of Waitangi/Te Tiriti o Waitangi***

The Act contains a number of amendments aimed at giving better effect to The Treaty of Waitangi/Te Tiriti o Waitangi (**Te Tiriti**). At the school level, changes to board objectives are the primary means of providing in legislation for boards to give better effect to meeting their obligations under Te Tiriti. Objective 4 requires boards to give effect to Te Tiriti by—

- working to ensure that their plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori and te ao Māori:
- taking all reasonable steps to make instruction available in te reo Māori and tikanga Māori:
- achieving equitable outcomes for Māori students.

At the system level, the Act makes it easier for those in the education sector to understand their rights and obligations under Te Tiriti by locating in one place key provisions in the Bill that recognise and respect the Crown’s responsibility to give effect to Te Tiriti.

The Act will also enable the Minister of Education and the Minister for Māori Crown Relations: Te Arawhiti, after consultation with Māori, to jointly issue and publish a statement made and gazetted to specify what agencies serving the education system must do to give effect to public service objectives expectations in relation to Te Tiriti, with the objective of providing equitable education outcomes for all students. The intention is a formal and publicly accessible statement that provides greater specificity around what education agencies must do to comply with Te Tiriti.

### Board objectives

Under [section 127\(1\) of the Education and Training Act 2020](#) (external link), which was enacted on 1 August 2020, the primary objectives of a School Board have been amended. There are now four primary objectives, to help Boards focus on what matters most for learners and their whānau.

A Board’s primary objectives in governing a school are to ensure that:

(a) every student at the school is able to attain their highest possible standard in educational achievement; and

(b) the school—

(i) is a physically and emotionally safe place for all students and staff; and

(ii) gives effect to relevant student rights set out in this Act, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993; and

(iii) takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and

(c) the school is inclusive of, and caters for, students with differing needs; and

(d) the school gives effect to Te Tiriti o Waitangi, including by—

(i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and

(ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and

(iii) achieving equitable outcomes for Māori students.

To meet the primary objectives, the Board must:

(a) have particular regard to the statement of national education and learning priorities issued under section 5; and

(b) give effect to its obligations in relation to—

(i) any foundation curriculum statements, national curriculum statements, and national performance measures; and

(ii) teaching and learning programmes; and

(iii) monitoring and reporting students' progress; and

(c) perform its functions and exercise its powers in a way that is financially responsible; and

(d) if the school is a member of a community of learning that has a community of learning agreement under clause 2 of Schedule 5, comply with its obligations under the agreement; and

(e) comply with all of its other obligations under this or any other Act.

### National Administration Guideline 2

Each board of trustees, with the principal and teaching staff, is required to:

- a. develop a strategic plan which documents how they are giving effect to the National Education Guidelines through their policies, plans and programmes, including those for curriculum, aromatawai and/or assessment and staff professional development;
- b. maintain an on-going programme of self-review in relation to the above policies, plans and programmes, including evaluation of good quality assessment information\* on student progress and achievement;
- c. on the basis of good quality assessment information\* report to students and their parents on progress and achievement of individual students:
  - i. in plain language, in writing, and at least twice a year; and
  - ii. across The National Curriculum, as expressed in The New Zealand Curriculum 2007 or Te Marautanga o Aotearoa, including in mathematics and literacy, and /or te reo matattini and pāngarau;
- d. on the basis of good quality assessment information\*, report to the school's community on the progress and achievement of students as a whole and of groups (identified through National Administration Guideline 1(c) above) including the progress and achievement of Māori students against the plans and targets referred to in NAG 1(e).

\* Good quality assessment information draws on a range of evidence to evaluate the progress and achievement of students and build a comprehensive picture of student learning across the curriculum.

### National Administration Guideline 6

Each board of trustees is also expected to comply with all general legislation concerning requirements such as attendance, the length of the school day and the length of the school year.

### National Administration Guideline 7

Each board of trustees is required to complete an annual update of the school charter for each school it administers, and provide the Secretary for Education with a copy of the updated school charter before 1 March of the relevant year.

### National Administration Guideline 8

Each board of trustees is required to provide a statement providing an analysis of any variance between the school's performance and the relevant aims, objectives, directions, priorities, or targets set out in the school charter at the same time as the updated school charter provided to the Secretary for Education under NAG 7.



## Powers and functions of boards

### **Section 124 - Status of board**

- (1) A board (and not the school) is a body corporate.
- (2) A board—
  - (a) is accordingly a legal entity separate from its members, office holders, employees, and the Crown; and
  - (b) continues in existence until it is dissolved in accordance with this Act

### **Section 125 - Board is governing body**

- (1) A board is the governing body of its school.
- (2) A board is responsible for the governance of the school, including setting the policies by which the school is to be controlled and managed.
- (3) Under section 125, the school's principal is the board's chief executive in relation to the school's control and management.

### **Section 126 - Bylaws**

- (1) A board may make bylaws that the board thinks necessary or desirable for the control and management of the school.
- (2) Before making a bylaw, the board must consult its staff, its students (to the extent that the board considers appropriate), and the school community regarding the proposed bylaw.

### **Section 127 - Objectives of boards in governing schools**

- (1) A board's primary objectives in governing a school are to ensure that—
  - (a) every student at the school is able to attain their highest possible standard in educational achievement; and
  - (b) the school—
    - (i) is a physically and emotionally safe place for all students and staff; and
    - (ii) gives effect to relevant student rights set out in this Act, the Bill of Rights Act 1990, and the Human Rights Act 1993; and
    - (iii) takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and
  - (c) the school is inclusive of, and caters for, students with differing needs; and
  - (d) the school gives effect to Te Tiriti o Waitangi including by—
    - (i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
    - (ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and
    - (iii) achieving equitable outcomes for Māori students.
- (2) To meet the primary objectives, the board must—
  - (a) have particular regard to the statement of national education and learning priorities issued under section 5; and
  - (b) give effect to its obligations in relation to—
    - (i) any foundation curriculum statements, national curriculum statements, and national performance measures; and
    - (ii) teaching and learning programmes; and
    - (iii) monitoring and reporting students' progress; and
  - (c) perform its functions and exercise its powers in a way that is financially responsible; and
  - (d) if the school is a member of a community of learning that has a community of learning agreement under clause 2 of Schedule 5, comply with its obligations under the agreement; and
  - (e) comply with all of its other obligations under this or any other Act.

### **Section 5 – Minister may issue statement of national education and learning priorities**

- (1) The Minister may, by notice in the *Gazette*,<sup>6</sup> issue a statement of national education and learning priorities for early childhood education, primary education, and secondary education.
- (2) The notice may contain the statement in full or describe the statement in general terms and indicate where the full text can be obtained.
- (3) A statement issued under subsection (1)—
- (a) must be consistent with the objectives set out in subsection (4); and
  - (b) must specify the date on which it takes effect; and
  - (c) remains in effect for a period of 5 years unless earlier withdrawn or replaced by notice in the *Gazette*; and
  - (d) must be published on an Internet site maintained by or on behalf of the Ministry.
- (4) The education and learning objectives for early childhood education, primary education, and secondary education are—
- (a) to help each child and young person attain their educational potential; and
  - (b) to promote the development, in each child and young person, of the following abilities and attributes:
    - (i) resilience, determination, confidence, and creative and critical thinking;
    - (ii) good social skills and the ability to form good relationships;
    - (iii) participation in community life and fulfilment of civic and social responsibilities;
    - (iv) preparedness for work; and
  - (c) to instil, in each child and young person, an appreciation of the importance of—
    - (i) the inclusion of different groups and persons with different personal characteristics;
    - (ii) diversity, cultural knowledge, identity, and the different official languages;
    - (iii) Te Tiriti o Waitangi and te reo Māori.

### **Section 130 - Principal is chief executive of board in relation to school's control and management**

- (1) A school's principal is the board's chief executive in relation to the school's control and management.
- (2) Except to the extent that any enactment, or the general law of New Zealand, provides otherwise, the principal—
- (a) must comply with the board's general policy directions; and
  - (b) subject to paragraph (a), has complete discretion to manage the school's day-to-day administration as they think fit.

### **Section 131 - Board has complete discretion**

- (1) A board has complete discretion to perform its functions and exercise its powers as it thinks fit.
- (2) Subsection (1) is subject to this Act, any other enactment, and the general law of New Zealand.

### **Principal's role**

#### **Section 130 - Principal is chief executive of board in relation to school's control and management**

<sup>6</sup> [You can find a summary of the NELP and TES here](#) and a [full copy of the NELP here \[PDF\]](#).

(1) A school's principal is the board's chief executive in relation to the school's control and management.

(2) Except to the extent that any enactment, or the general law of New Zealand, provides otherwise, the principal—

(a) must comply with the board's general policy directions; and

(b) subject to paragraph (a), has complete discretion to manage the school's day-to-day administration as they think fit.

### **Acting appointments**

In the event that the principal is absent from duty for any reason, or a vacancy arises for the principal's position, the board has authority under section 607 of the E&T Act 2020 to direct another staff member to exercise the powers and duties of the principal during the principal's absence, or while the vacancy continues.

### **Board constitution**

The composition of the board has a bearing on how well it can represent the community and govern the school. School boards of trustees are significantly different from other state governing boards because they are largely composed of members elected by the parents of students from the school. This means that there is no guarantee that a school board will always have a range of expertise and experience suitable for administering a school.

Boards may co-opt members for their expertise, or to ensure that the board composition reflects the demographic character of the school community.

Section 119 of the E&T Act 2020 sets out the composition of the board – that is the number of elected parent representatives, the principal, staff representative student representative and co-opted/appointed members.

Boards may decide to increase or decrease the number of members on their board. If they choose to alter the composition of their board then they must follow the procedures for altering their constitution in section 121.

Boards may co-opt or appoint members to reflect the community, provide balance or expertise. The limitations on the co-option or appointment of members are set out in clause 2 Schedule 23 of the Act. The criteria for selecting co-opted or appointed members are provided in clause 1, Schedule 23.

Clauses 1 and 2, Schedule 22 of the Act provide information on the eligibility of parent, staff and student representatives on a board. Clause 9, Schedule 23 provides that certain people are ineligible to be board members.

Schedule 23 provide procedures for the election of members, including staggered elections. Clause 12, Schedule 23 provides information on casual vacancies and clause 13, Schedule 23 provides information on the filling of casual vacancies.

Section 119 provides that any state integrated school shall have up to four members appointed by the school's proprietors.

Boards must comply with clause 10, Schedule 22 of the Act which provides for the disqualification of persons from being members on grounds of financial conflicts of interests.

Clause 11, Schedule 23 of the Act requires that before a person is elected, co-opted or appointed as a member, the person must confirm to the board that he or she is, to the best of his or her knowledge, eligible to be a member, having regard to the grounds of ineligibility in clauses 9 and 10.

### *Setting standard expectations for board members*

Sections 166-169 of the Act allow the Minister to issue a code of conduct for school board members that sets out the minimum standards of conduct that each member is required to meet. Individual school boards can decide to expand the minimum standards to reflect local expectations.

There are penalties for failing to comply with the code of conduct. The board may censure a board member, and the Minister may remove a member for a significant or persistent breach of the code. These sanctions do not apply to a principal. Principals are required on the board as part of their employment obligations so issues relating to Principals can be addressed through employment mechanisms.

The code of conduct will give board members a common basis to work from, encourage the development of good practice over time, and provide for more transparent accountability.

The Ministry of Education will be engaging with key stakeholders on developing a proposed draft code of conduct and expects to report back to the Minister on this in late 2020. A draft code of conduct is expected to be released for public consultation in early 2021 and the code issued by the end of 2021 to take effect for incoming board members in mid-2022.

Guidance will be developed for the sector on ways the code of conduct can support board operations and the process for addressing breaches to the code.

### *Consulting on bylaws (school rules)*

School boards are able to make bylaws (school rules) for the school ([see section 126\(1\), of Education and Training Act 2020](#)).

Under section 126(2) of the Education and Training Act 2020, which came into effect on 1 August 2020, school boards are required to consult with its staff, its students (to the extent that the board considers appropriate) and the school community when making bylaws. **This applies to new school rules, or when making amendments to current school rules.**

Refer to the MOE website:

- [Consulting on bylaws \(school rules\)](#)

Board meetings

- [Education \(School Boards\) Regulations 2020](#)
- [Local Government Official Information and Meetings Act 1987](#)

Regulations 10 to 19 of the Education (School Boards) Regulations 2020 <sup>7</sup> deal with matters relating to school board meetings and procedures. Every board must appoint a member (not being the principal or a staff or student representative) to preside at meetings of the board.

Part 7 (sections 46 - 54) of the Local Government Official Information and Meetings Act 1987 [LGOIM Act] contains provisions relating to the conduct of meetings held by boards of trustees.

Section 46 provides that boards must take all reasonable steps to ensure that parents of students enrolled at schools can readily find out within a reasonable time before a board meeting, when and where the meeting will take place.

Section 46A establishes requirements relating to the notification of agendas and associated reports circulated to board members regarding meetings.

Section 47 provides that meetings are to be open to the public and under section 51 the public can inspect or receive copies of the minutes of board meetings.

Whether the public is excluded or not, minutes should be taken as a record of what was discussed at the meeting, who by and when (see NZSTA Trustee Handbook for Boards on minutes including “in committee”).

Boards may exclude the public from meetings by resolution (“go into committee”) in the terms specified in the LGOIM Act, where there is good reason, as provided in the Act.

Minutes should provide a clear, accurate, stand-alone record of what happened at the meeting and decisions made by the Board. This is particularly important as decisions made by the Board may be subject to the scrutiny of the Ombudsmen and/or the courts.

Section 135 of the E&T Act requires an audit report to be given for school boards. As part of this process the Auditor-General can request to see the minutes of board meetings in order to inform their opinion in the report.

Also refer to the following under the Education (School Boards) Regulations 2020

- 10 [Procedure of board](#)
- 11 [Presiding member](#)
- 12 [Board meetings](#)
- 13 [Quorum](#)
- 14 [Voting](#)
- 15 [Attendance at meetings](#)

[Why should minutes be kept? To:](#)

- Comply with the requirements of the Public Records Act 2005 (*refer below*);
- Keep debate in the public arena;
- Facilitate future access to board deliberations;
- Enable reconciliation of differences of opinion arising at any future stage;

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<sup>7</sup> Education (School Boards) Regulations 2020 - apply from 15/9/2020.

- Aid in transparency: Everyone can be aware of what is happening;
- Promote good management;
- Enhance accountability to the public.

## **Delegation of Boards Powers**

### **Regulation 8 of Education (School Boards) Regulations 2020**

(1) A board may, by resolution and in writing either generally or specifically, delegate any of the functions or powers of the board or of a board member to any of the following persons:

- (a) a board member or members:
- (b) the principal or any other employee or office holder of the board:
- (c) a committee consisting of at least 2 persons at least 1 of whom is a board member:
- (d) a person approved by the Minister:
- (e) any class of persons that comprises any of the persons listed in paragraphs (a) to (d).

(2) Subclause (1) does not apply to any functions or powers specified in the Act as not being capable of delegation.

(3) The board must not delegate the general power of delegation.

#### *Effect of delegation*

(4) A person to whom any function or power is delegated may perform the function or exercise the power in the same manner and with the same effect as if the person were the board or board member (subject to any restrictions or conditions imposed by the board).

(5) A person purporting to act under a delegation—

- (a) is, in the absence of proof to the contrary, presumed to be acting in accordance with the delegation; and
- (b) must produce evidence of the person's authority to do so if reasonably requested to do so.

#### *Subdelegation*

(6) A person to whom any function or power is delegated may delegate that function or power only—

- (a) with the prior written consent of the board; and
- (b) subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate.

#### *Other matters relating to delegation*

(7) A delegation under subclause (1)—

- (a) is revocable at will by resolution of the board and written notice to the delegate (or by any other method provided for in the delegation):
- (b) does not prevent the board or the board member performing the functions or the exercising the powers:
- (c) does not affect the responsibility of the board for the actions of any delegate acting under the delegation:

(d) is not affected by any change in the membership of the board or of any committee or class of persons.

### **Regulation 9 - Board may appoint committees**

(1) A board may, by resolution, appoint committees—

(a) to advise it on any matters relating to the board’s functions and powers that are referred to the committee by the board; or

(b) to perform or exercise any of the board’s functions or powers that are delegated to the committee.

(2) A person must not be appointed as a member of a committee unless, before appointment, the person discloses to the board the details of any financial interest that would disqualify the person from being a board member under [clause 10](#) of Schedule 23 of the Act.

(3) [Regulation 8](#) applies, with any necessary modifications, to each member of a committee who is not a board member.

### Official Information Act 1982

Boards are classified as “organisations” under the First Schedule of the Official Information Act 1982 and must comply with the provisions of the Act. Boards should therefore be familiar with the Act’s requirements regarding availability of information, the processing of requests for official information by the public and the release of information. Sections 4 and 5 of the Act set out the purpose and the principle of availability. Boards should refer directly to the provisions of the Act when a request for information is received, and ensure that each request is handled in accordance with the relevant provisions of the Act.

### Privacy Act 2020<sup>8</sup>

Boards must also comply with the Privacy Act 2020 and ensure that personal information is always dealt with in accordance with the principles of this Act. For example, the board should not disclose personal information about anyone during a meeting of the board open to the public without that person’s consent.

The new Act has clarified that an agency can only collect identifying information if it is necessary. If you do not need it you should not collect it.

Agencies need to take particular care to only collect information from children and young people in ways that are fair and reasonable in the circumstances. You can access the Privacy Act 2020 module on [e-learning website here](#)

### Terms, holidays and closure of schools

Schedule 21 of the E & T Act 2020 sets the requirement for boards to ensure schools are open for instruction during the terms and on the half days prescribed by the Minister of Education. Boards

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<sup>8</sup> Note the new Privacy Act applies from December 2020.

of trustees may vary their opening hours without approval by the Minister of Education but must consult with parents, staff and the community when doing so.

There is in Schedule 21, provision that requires boards to close schools on the weekends (unless otherwise provided by the Minister) and the holidays prescribed by the Minister.

The Minister may authorise school boards to operate multiple timetables in appropriate circumstances.

**Note** also section 659 - [Power of boards to close schools](#)

## Enrolment of students

Section 33 of the E&T Act 2020 states that every domestic student is entitled to free enrolment and education at a State school beginning on their fifth birthday and ending after the students 19th birthday. The right includes the entitlement to attend the school at which the student is enrolled all the hours that the school is open for instruction.

Students aged between 6 and 16 years must be enrolled at a registered school [section 35]. Note the exception in s35(2).

Students of registered schools are required to attend whenever the schools are open if the student is required to be enrolled and is 5 years and enrolled. A board must take all reasonable steps to ensure that the school's students attend when the school is open [s 36(2)].

Sections 62 and 67 set out the restrictions on enrolment at primary and secondary schools respectively.

Under section 34 of the Act, students with special education needs have the same rights to education at State schools as others. This section provides the right to free education and enrolment.

The actions of school boards are covered by section 3 of the New Zealand Bill of Rights Act 1990 (NZBORA) as state schools perform a public function, power or duty. This means that section 19(1) of the NZBORA applies to schools.

Section 19(1) of the NZBORA states that everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993. The grounds of discrimination in the Human Rights Act include disability, race, ethnic/national origin, and religious belief.

## Keeping Enrolment records

Section 237 of the Act provides that the principal of a registered school must ensure that an enrolment record in the form and containing the information specified in rules made by the Secretary for Education by notice in the Gazette. Principals are required to keep records relating to matters such as enrolment of students. Principals are also responsible for accurate keeping of an admission register and register of daily attendance (Regulation 3 of the Education (School Attendance) Regulations 1951).



## National student numbers

Schedule 24 of the E&T Act outlines the legislative requirements that apply to national student numbers to be used by specified users for specific purposes in accordance with restrictions and conditions notified by the MOE. These include sharing information relating to individual students for the purpose of monitoring and ensuring enrolment and attendance.

The Secretary for Education notifies all authorisations, requirements, conditions and restrictions regarding student numbers by *Gazette* notice.

## Work experience

Under section 53 of the Act boards may authorise any student to obtain work experience. Section 53(3) provides that no principal, teacher or occupier of a workplace must allow a student to enter or remain in a workplace to get work experience except in accordance with conditions prescribed by the Minister.

Boards should refer to the conditions prescribed by the Minister by notice in the *Gazette*<sup>2</sup>.

## Health immunisation records <sup>9</sup>

Boards are required to keep immunisation registers, to record for primary school students born after 1 January 1995, matters relating to the Health (Immunisation) Regulations 1995.

## Enrolment schemes

Sections 71 to 75 and Schedule 20 of the Act establish the purpose, principles, and content of enrolment schemes to be followed if a school wants to have an enrolment scheme. Section 71(2) provides that the enrolment scheme of every state school must, as far as possible, ensure that:

- The scheme does not exclude local students; and
- No more students are excluded from the school than is necessary to avoid overcrowding at the school.

**Note:** Section 71 and clauses 2 to 15, Schedule 20 of the Act relating to enrolment schemes apply to Kura, designated character schools, State integrated schools and specialist schools with modifications as set out in clause 16, Schedule 20.

## Stand-downs, suspensions, exclusions and expulsions

Sections 78 to 89 of the E&T Act 2020 provide the purpose, procedures and requirements relating to stand-downs, suspensions, exclusions and expulsions. Section 78 provides the purpose of the

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<sup>2</sup> NZ Gazette Notice No 158, 2 December 2004 page 3919 - [Work Experience Notice](#) and [Students on Work Experience: A health and safety guide for schools and employers](#)

<sup>9</sup> [Immunisation Guidelines for Early Childhood Services and ...](#)

provisions of the Act concerning the standing-down, suspension, exclusion, or expulsion of a student from a state school is to:

- a. Provide a range of responses for cases of varying degrees of seriousness;
- b. Minimise the disruption to a student's attendance at school and facilitate the return of the student to school when that is appropriate; and
- c. Ensure that individual cases are dealt with in accordance with the principles of natural justice.

The principal and board as appropriate must ensure that the decision to stand down or suspend a student is made in accordance with all the legal requirements.

The processes dealt with in sections 76 to 85 of the Act are—

- a. “Standing-down”, which is the process, duties and notification requirements described in sections 80, 84(1), 88(1) of the Act:
- b. “Suspension”, which is the process, duties, notification and rules described in sections 80(1) and (3), 81(1) to (5), 83(1)(a) and (b), 83(2) to (5), 84, 85, 86, and 88(2) and (3).of the Act:
- c. “Exclusion”, which is the process, duties, notification and rules described in sections 81(1)(c), (6) and (7), 82, 86, 87(1) and (2), and 88(3)”. of the Act:
- d. “Expulsion”, which is the process, duties, notification and rules described in sections 83(1)(c), 86(2)(b), 87, and 88(3)

Clause 7 of the Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999<sup>10</sup> provides that every participant in the processes, practices, and procedures dealt with in sections 80 to 88 of the Act and these rules should be guided by the following principles:

- a. The need for every participant to understand the processes, practices, and procedures;
- b. The need for every participant to treat every other participant with respect, which includes recognising and respecting New Zealand's cultural diversity;
- c. The need to recognise the unique position of Māori;
- d. The need for every participant to be guided by the charter of the student's school; and
- e. The need for every participant to recognise that the board has a responsibility to maintain a safe and effective learning environment at the student's school.

### Resolving serious disputes

Under Part 3, subpart 9 of the Ed &T Act a dispute resolution scheme is established to facilitate and promote the resolution of serious disputes between students and State school in an effective, flexible and timely manner.<sup>11</sup>

**Serious dispute** means a dispute between a student and the board of the student’s school about—

- (a) the student’s right to enrol at or attend the school:
- (b) the student’s rights to education under this Act generally:
- (c) the learning support the student receives at the school:

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<sup>10</sup> Note the Rules continue to apply until amended, revoked or replaced by the E&T Act. Refer to clause 4, Schedule 1 (Savings provisions) of the E&T Act.

<sup>11</sup> Section 216 of the Act

- (d) the standing-down, suspension, exclusion, or expulsion of the student by the school:
- (e) any racism or other form of discrimination that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993 experienced by the student while at the school:
- (f) the student's physical or emotional safety while at the school:
- (g) any physical force used on the student by a teacher or an authorised staff member employed or engaged by the school.<sup>12</sup>

## Guidance and counselling

Section 103 of the Act provides that the principal of a state school shall take all reasonable steps to ensure that:

- a. students get good guidance and counselling; and
- ab. students in year 7 and above are provided with appropriate career education and guidance that is designed to prepare them to join the workforce or undertake further education or training when they leave school; and
- b. A student's parents are told of matters that, in the principal's opinion,
  - i. Are preventing or slowing the student's progress through the school; or
  - ii. Are harming the student's relationships with teachers or other students.

## Charters

The Saving provisions of the E&T Act<sup>13</sup> provide as follows:

*Despite any other provision in this Act, the following provisions of the 1989 Act, as they read immediately before the commencement of this clause, **continue to apply until 1 January 2023** as if they had not been repealed or replaced by this Act:*

*(a) section 60A (curriculum statements and national performance measures):*

*(b) section 61 (school charter):*

*(c) section 62 (procedural requirements of preparing or updating school charter):*

*(ca) section 63 (effect of school charter):*

*(cb) section 63A (when school charter or updated charter takes effect):*

*(cc) section 63B (board must make copies of school charter available):*

*(d) section 78L (action plans):*

*(e) section 87 (annual reports).<sup>14</sup>*

The school charter is an integral part of school self-management because it reflects the mission, aims, objectives, directions and targets of the board that will give effect to the national education guidelines and the board's priorities (subsection 61(2) Education Act 1989), and provide a base against which the board's actual performance can later be assessed.

The charter also serves as the undertaking by the Board of Trustees to the Minister of Education. There is no definitive procedure for preparing a charter, and there is no precise format a charter

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<sup>12</sup> Section 217 of the Act

<sup>13</sup> Clause 7 - [Saving provisions](#)

<sup>14</sup> Refer Part 1, Subpart 1, clause 5

must take. However, subsections 61(3), (4) and (5) of Ed Act 1989 do provide that certain information must be included in Charters.

Such information includes:

- a. The aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity, and the unique position of the Maori culture;
- b. The aim of ensuring all reasonable steps are taken to provide instruction in tikanga Maori (Maori culture) and te reo Māori (Māori language) for full-time students whose parents ask for it;
- c. A long-term strategic planning section;
- d. The board's aims, objectives, directions, priorities in such matters as:
  - i. The board's activities aimed at meeting both general government policy objectives for all schools and specific policy objectives for the school;
  - ii. The management of the school's and board's capability, resources, assets, and liabilities, including its human resources, finances, property, and other ownership matters;
  - iii. Other matters of interest to the public that the Minister may determine.

A school charter must also contain all annual or long-term plans the board is required to have or has prepared for its own purposes or contain a summary of each plan or a reference to it.

The Education Act 1989 requires that the charter must be amended as soon as practicable if the board becomes aware that it contains false or misleading information.

### Reporting on Student Achievement

Each board of trustees, with the principal and staff is required, on the basis of good quality assessment information report to students and their parents on the achievement of individual students in plain language, in writing, and at least twice a year, and across The National Curriculum, and to the school's community on progress and achievement of students as a whole and of groups, identified through NAG 1(c) including the achievement of Māori students against the plans and targets referred to in NAG 1(e).<sup>15</sup>

### Schools' planning and reporting

Why planning and reporting is important.

As a board member you're accountable for the performance of the school or kura. Your board plays a vital role in deciding and leading its future direction and performance.

A key focus of your role is improving student progress, achievement and wellbeing, particularly for those groups of students at risk of not achieving.

Setting targets for the coming year, regularly reviewing progress and evaluating what's been achieved means your school will be better placed to ensure all students can achieve educational success.

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<sup>15</sup> NAG 2(c) and (d)

## An overview of the planning and reporting cycle

Planning and reporting is a collaborative process. It provides teachers, school leaders and the board of trustees with an opportunity to work with parents, whānau and your community to develop shared aims and targets for what you want your students to achieve.

[An overview of the planning and reporting cycle](#)

Under the Education and Training Act 2020, a new planning and reporting framework will come into effect 1 January 2023.

[Education and Training Act 2020](#)

Meanwhile the legislative requirements for school planning and reporting documents remain the same.<sup>16</sup>

[Current planning and reporting requirements](#)

## Developing and preparing your documents

Each of your planning and reporting documents must contain specific information.

[Develop and prepare your documents](#)

## Submitting your documents

Your charter and analysis of variance is submitted through the School Data Portal.

[Submit your documents](#)

## Copyright Act 1994

School boards must comply with the provisions of the Copyright Act 1994. Boards should have guidelines consistent both with the relevant provisions of the Act that do not permit copying of copyright works, and also with the exceptions which apply for educational purposes in certain circumstances and conditions.

## Public Records Act 2005

The Public Records Act allows Archives NZ to actively care for documents that are identified as important for New Zealand's history, and covers school records. Schools cannot destroy or dispose of any school records without Archives New Zealand's authorisation.

A School Records Retention/Disposal Information Pack has been approved by the Chief Archivist as the legal document for dealing with the retention and disposal of school records.<sup>4</sup>

## Useful Resources

[More information on all the changes in the Act](#)

## Special Education Policy Guidelines

[www.education.govt.nz](http://www.education.govt.nz)

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<sup>16</sup> The following from the MOE website.

<sup>4</sup> Refer to MOE Circular 2006/19-School Records Retention and Disposal. [School records retention/disposal information pack - Education.govt.nz](#)

*School Trustees:*

<http://www.ero.govt.nz/publications/school-trustees-booklet-helping-you-ask-the-right-questions/>

Raising student achievement through targeted actions 2015

<http://www.ero.govt.nz/publications/raising-student-achievement-through-targeted-actions/>

Improving Guidance and Counselling for Students in Secondary Schools 2013

<http://www.ero.govt.nz/publications/improving-guidance-and-counselling-for-students-in-secondary-schools/>

Increasing Educational Achievement in Secondary Schools 2013

<http://www.ero.govt.nz/publications/increasing-educational-achievement-in-secondary-schools/>

Accelerating the Progress of Priority Learners in Primary Schools 2013

<http://www.ero.govt.nz/publications/accelerating-the-progress-of-priority-learners-in-primary-schools/>

National Administration Guidelines, and National Education Guidelines

[www.education.govt.nz/ministry-of-education/legislation/nags/](http://www.education.govt.nz/ministry-of-education/legislation/nags/)

Trustee Handbook

New Zealand School Trustees Association

see [www.nzsta.org.nz](http://www.nzsta.org.nz)

Human Rights Commission Fact Sheets

[www.hrc.co.nz](http://www.hrc.co.nz), and go to resources

[School resources | Waitangi Tribunal](#)

Guidelines for Principals and Boards of Trustees on Stand-downs, Suspensions, Exclusions and Expulsions

([www.education.govt.nz/assets/Documents/School/Managing-and-supporting-students/Stand-downs-suspensions-exclusions-and-expulsions-guidelines/SuspensionGoodPracticeWEB.pdf](http://www.education.govt.nz/assets/Documents/School/Managing-and-supporting-students/Stand-downs-suspensions-exclusions-and-expulsions-guidelines/SuspensionGoodPracticeWEB.pdf))

Effective Governance - Resources for School Boards of Trustees.

Effective Governance – Training for School Board of Trustees.

School Planning and Reporting – Resources for School Boards of Trustees.

([www.education.govt.nz](http://www.education.govt.nz))

Ministry of Education Circulars -refer to [Circulars](#)

## Section Two – Curriculum Compliance Guide

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### Key Legislation

- Education and Training Act 2019
  - Education Act 1989 [transitional and saving provisions]
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**National Administration Guideline 1:**  
(content covered in Self-Audit Checklist relating to curriculum)

## Introduction

Each board of trustees is required to foster student achievement by providing teaching and learning programmes which incorporate The National Curriculum as expressed in *The New Zealand Curriculum 2007* or *Te Marautanga o Aotearoa*.

The key function of the school is to effectively manage the delivery of the curriculum.

The teaching staff and principal monitor, manage, and deliver the curriculum, but the Board of Trustees has the ultimate responsibility for curriculum delivery.

*The New Zealand Curriculum 2007* comprises a set of National Curriculum Statements that define the learning principles and achievement aims and objectives that all New Zealand state schools are required to follow. *The New Zealand Curriculum 2007* was published by Gazette notice on 29 October 2009.

State schools are required to provide learning and teaching programmes based on **either** the National Curriculum statements in *The New Zealand Curriculum*, **or** the National Curriculum statements in *Te Marautanga o Aotearoa*.

State schools that choose to provide learning and teaching programmes based on *The New Zealand Curriculum*, and those schools that choose to provide learning and teaching programmes based on *Te Marautanga o Aotearoa*.

A board of trustees of a school with a bilingual class or classes where Māori is one of the languages of instruction may develop and implement teaching and learning programmes based on *Te Marautanga o Aotearoa* for those classes and on teaching and learning programmes in *The New Zealand Curriculum* for the rest of the school.

**Note:** the MOE informed that a curriculum support guide including resources and tools to support teaching and learning through quality local curriculum design, assessment and aromatawai practices, and reporting to students, parents and whānau will be sent to schools from 28 January 2019.

**Also refer to MOE website on [Curriculum and assessment changes](#)**

## Key Requirements

The **Education Act 1989**, section 60A<sup>17</sup> provides the legislative basis for the establishment of the National Education Goals, Administration Guidelines, Foundation Curriculum Policy Statements and Curriculum Statements.

### **60A Curriculum statements and national performance measures**

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<sup>17</sup> Refer clause 7, [Saving provisions](#) continues to apply until 1 January 2023.

(1) The Minister may from time to time, by notice in the *Gazette*, publish (in their entirety, or by way of a general description and an indication of where the full text can be obtained) all or any of the following:

(a) **national education goals**, which are—

(i) statements of desirable achievements by the school system, or by an element of the school system; and

(ii) statements of government policy objectives for the school system:

(aa) **foundation curriculum policy statements**, which are statements of policy concerning teaching, learning, and assessment that are made for the purposes of underpinning and giving direction to—

(i) the way in which curriculum and assessment responsibilities are to be managed in schools:

(ii) national curriculum statements and locally developed curriculum:

(b) **national curriculum statements**, which are statements of—

(i) the areas of knowledge and understanding to be covered by students; and

(ii) the skills to be developed by students; and

(iii) desirable levels of knowledge, understanding, and skill, to be achieved by students,— during the years of schooling:

(ba) [Repealed]

(c) **national administration guidelines**, which are guidelines relating to school administration and which may (without limitation)—

(i) set out statements of desirable codes or principles of conduct or administration for specified kinds or descriptions of person or body, including guidelines for the purpose of [section 61](#):

(ii) set out requirements relating to planning and reporting including—

(A) scope and content areas, where appropriate:

(B) the timeframe for the annual update of the school charter:

(C) broad requirements relating to schools' consultation with parents, staff, school proprietors (in the case of integrated schools) and school communities, and the broad requirements to ensure that boards take all reasonable steps to discover and consider the views and concerns of Maori communities living in the geographical area the school serves, in the development of a school charter:

(D) variations from the framework for school planning and reporting for certain schools or classes of schools, based on school performance:

(iii) communicate the Government's policy objectives:

(iv) set out transitional provisions for the purposes of national administration guidelines.

(2) Without limiting the generality of subsection (1), a notice relating to a national curriculum statement may—



(a) specify different commencement dates for different provisions or different purposes, which dates may differ according to the class or designation of a school, the group or year level of students attending a school, or any combination of such classes, designations, groups, or levels:

(b) specify a transitional period during which a board may elect to comply with an existing curriculum statement or the new curriculum statement, and specify a date on which a board must begin complying with the new curriculum statement.

## Health curriculum

Boards of all state schools must, at least once in every 2 years, after consultation with the school community, adopt a statement on the delivery of the health curriculum. Section 91 of the E & T Act sets out details of the consultation requirements.<sup>18</sup>

Note: A parent of a student may ask the principal in writing that the student is released from tuition in specified parts of the health curriculum related to sexuality education [refer to section 51 for details].

## Special education (Learning Support) needs at school

The aim of the Government's special education policy is to improve learning opportunities for all students with special education needs. Students with special education needs include learners with disabilities, learning difficulties, communication or behaviour difficulties, sensory or physical impairments. Special education is about providing these students with the support they need to access learning – whether it is therapy, transport, changes to the learning programme or environment, specific teaching strategies, and/or specialised equipment or materials.

The policy affirms the right of every student to learn in accordance with the principles and values of the National Education Guidelines, which include the National Education Goals, the Foundation Curriculum Policy Statements, the National Curriculum Statements and the National Administration Guidelines, as well as the Special Education Policy Guidelines. The New Zealand Disability Strategy provides a framework for ensuring full participation of students with disabilities.

Boards must ensure all the policies, procedures and practices relating to students with special education needs are in place in the school and are applied without discrimination, that is that they are:

- a. Objective, value diversity and are integrated with the school curriculum;
- b. School's leadership work towards building an inclusive school culture;<sup>19</sup>
- c. Regularly re-evaluated and developed to enhance effectiveness;
- d. Well communicated to all staff and the families, whānau of students and consistently applied;
- e. In compliance with the Education and Training Act 2020 (section 34), the NZ Bill of Rights Act 1990 (section 19), the Human Rights Act 1993 (sections 21)), the National Education Guidelines, and

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<sup>18</sup> Also refer to MOE website: [Sexuality education: a guide for principals, boards of trustees, and teachers \(2015\)](#), and [Sexuality education in secondary schools - information for Boards of Trustees PDF 91 kb](#)

<sup>19</sup> [Go to the Inclusive Education website](#)

- f. NZ Schools binding obligations to include and provide a quality education for all learners under the New Zealand Disability Strategy<sup>20</sup> and [United Nations Convention on the Rights of Persons with Disabilities](#) (external link)

It is important that boards and principals are fully up-to-date with available special education resourcing/support, and how it is allocated and reviewed within the school.

These national and international obligations are backed up by the:

<http://www.education.govt.nz/school/student-support/special-education/education-disability-legislation/>

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<sup>20</sup> [New Zealand Disability Strategy – Office for Disability Issues website](#) (external link)

Extract from the NZ Gazette Notice 29 October 2009

**National Curriculum: The National Curriculum Statements<sup>21</sup>**

Pursuant to section 60A of the Education Act 1989 (incorporating all amendments), the Minister of Education hereby publishes in *The New Zealand Curriculum* and *Te Marautanga o Aotearoa*, national curriculum statements for:

| <b>The New Zealand Curriculum (2007)</b> | <b>Te Marautanga o Aotearoa</b> |
|--|---------------------------------|
| • The Arts                               | Ngā Toi                         |
| • English                                | Te Reo Māori                    |
| • Health and Physical Education          | Hauora                          |
| • Mathematics and Statistics             | Pāngarau                        |
| • Science                                | Pūtaiao                         |
| • Social Sciences                        | Tikanga ā-iwi                   |
| • Technology                             | Hangarau                        |
|  | Te Reo Pākehā                   |

State schools are to provide learning and teaching programmes based on:

EITHER

The National Curriculum statements in *The New Zealand Curriculum*, except that level 1 and 2 Māori immersion settings that base their learning and teaching programmes on *The New Zealand Curriculum* must also provide learning and teaching programmes based on Te Reo Pākehā

OR

The National Curriculum statements in *Te Marautanga o Aotearoa*

A board of trustees of a school with a bilingual class or classes where Māori is one of the languages of instruction may develop and implement teaching and learning programmes based on *Te Marautanga o Aotearoa* for those classes and on teaching and learning programmes in *The New Zealand Curriculum* for the rest of the school.

State schools that choose to provide learning and teaching programmes based on *The New Zealand Curriculum* must adopt the foundation curriculum policy statements for *The New Zealand Curriculum*.

State schools that choose to provide learning and teaching programmes based on *Te Marautanga o Aotearoa* must adopt the foundation curriculum policy statements for *Te Marautanga o Aotearoa*.

State schools that choose to provide learning and teaching programmes based on *The New Zealand Curriculum* must do so from commencement date of 2 February 2010.

State schools that choose to provide learning and teaching programmes based on *Te Marautanga o Aotearoa* must do so from commencement date of 1 February 2011.

## Useful Resources

Guidelines for Board Assurance Statement and Self-Audit Checklist  
Education Review Office January 2022

*Keeping children engaged and achieving through rich curriculum inquiries*

The New Zealand Curriculum (revised curriculum effective 2010)

[www.education.govt.nz](http://www.education.govt.nz)

Te Marautanga o Aotearoa

Te Marautanga o Aotearoa is the Māori medium partner to the New Zealand Curriculum.

[Te Marautanga o Aotearoa](#) (external link)

*Success for All – Every School, Every Child*

[www.education.govt.nz/assets/Documents/School/Inclusive-education/SuccessForAllEnglish.pdf](http://www.education.govt.nz/assets/Documents/School/Inclusive-education/SuccessForAllEnglish.pdf)

*Effective Governance – Building Inclusive Schools*

<https://www.nzsta.org.nz/assets/Governance/Effective-governance-publications-and-resources/Building-inclusive-schools.pdf>

*Educationally powerful connections with parents and whānau 2015*

<http://www.ero.govt.nz/publications/educationally-powerful-connections-with-parents-and-whanau/>

*Inclusive practices for students with special education needs 2015*

<http://www.ero.govt.nz/publications/inclusive-practices-for-students-with-special-education-needs-in-schools/>

For information on some of the resources we provide to schools to support learners with diverse needs, please see [here](#).

*Including Students with High Needs Primary Schools 2014*

<http://www.ero.govt.nz/publications/including-students-with-high-needs-primary-schools/>

*Careers education and guidance: Good practice 2014*

<http://www.ero.govt.nz/publications/careers-education-and-guidance-good-practice/>

*Evaluation at a Glance: Priority Learners in New Zealand Schools 2012*

<http://www.ero.govt.nz/publications/evaluation-at-a-glance-priority-learners-in-new-zealand-schools/>

*The New Zealand Curriculum Principles: Foundations for Curriculum Decision-Making 2012*

<http://www.ero.govt.nz/publications/the-new-zealand-curriculum-principles-foundations-for-curriculum-decision-making/>

*Science in The New Zealand Curriculum: Years 5 to 8 2012*

<http://www.ero.govt.nz/publications/science-in-the-new-zealand-curriculum-years-5-to-8/>

<https://www.ero.govt.nz/publications/promoting-wellbeing-through-sexuality-education/>

through sexuality education

[Students with learning support needs](#)

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21 *New Zealand Gazette*, No 157 – 29 October 2009, page 3812.

## Section Three – Health, Safety & Welfare Compliance Guide

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### Key Legislation

- Education and Training Act 2020
  - Education Act 1989 [Saving provisions]
  - Employment Relations Act 2000
  - Food Act 2014 and Food Regulations 2015
  - Hazardous Substances and New Organisms Act 1996
  - Health and Safety at Work Act 2015
  - Human Rights Act 1993
  - Harmful Digital Communications Act 2015
  - New Zealand Bill of Rights Act 1990
  - Privacy Act 2020
  - Building Act 2004
  - Resource Management Act 1991
  - Smokefree Environments and Regulated Products Act 1990
  - Children’s Act 2014
  - Education (Hostels) Regulations 2005
  - Regulations made under the Health and Safety at Work Act 2015
  - Education (Surrender, Retention, and Search) Rules 2013
  - Children’s (Requirements for Safety Checks of Children’s Workers) Regulations 2015
  - Education (Physical Restraint) Rules 2017
  - Fire and Emergency New Zealand Act 2017
  - Fire Safety, Evacuation Procedures, and Evacuation Schemes Regulations 2018
  - **COVID-19 Public Health Response Act 2020**
  - **COVID-19 Public Health Response (Vaccinations) Order 2021.**
  - **COVID-19 Public Health Response (Protection Framework) Order 2021**
  - **Epidemic Preparedness Act 2006**
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#### National Administration Guideline 4:

According to legislation on financial and property matters, each board of trustees is also required in particular to:

(c) comply with the negotiated conditions of any current asset management agreement, and implement a maintenance programme to ensure that the school's buildings and facilities provide a safe, healthy learning environment for students.

#### National Administration Guideline 5:

Each Board of Trustees is also required to:

- (a) Provide a safe physical and emotional environment for students
- (b) Promote healthy food and nutrition for all students
- (c) Comply in full with any legislation currently in force or that may be developed to ensure the safety of students and employees.

## Introduction

The educational and social development of students at school is closely linked to their physical and emotional safety. Students cannot learn effectively if they are physically or verbally abused, victims of violence, racial or sexual harassment, discrimination or bullying, or if their school surroundings are unsafe.

Students learn best in safe and effective learning environments. Research has demonstrated that the quality of school leadership has an impact on student achievement. Between them, the Board of Trustees and the school principal are responsible for school leadership and for the creation of a school climate that supports learning.

Providing a safe physical and emotional environment (including safety on the Internet) for students at school is one of the basic responsibilities of each board of trustees. However, it is also one of the requirements that is most difficult for boards to address, both because there are so many factors that impact on student safety, and because safety issues do not always have clear solutions.

There are various legislative requirements relating to student safety and it is important that all schools familiarise themselves with these requirements and ensure they are appropriately addressed.

National Administration Guideline 5 provides that boards must comply in full with any legislation currently in force or that may be passed to ensure the safety of students and employees. The Ministry of Education advises that to address the requirements of NAG 5, boards should ensure that:

- school policies and/or procedures and practices meet all legislative requirements for health and safety;
- staff and students are aware of and understand these policies and/or procedures;
- school policies and/or procedures on health and safety complement health education programmes for students; and
- health and safety issues are regularly monitored and reported on.

NAG 5 also requires boards to promote healthy food and nutrition for all students.

ERO published a national report – *Safe Schools: Strategies to Prevent Bullying* – drawn from reviews of schools over three terms. This report found that most schools acknowledge that bullying is a risk to be managed, and take their responsibilities seriously in seeking to prevent bullying.

Bullying is intimidating behaviour that:

- a. tends to be repeated over time
- b. can be directed at particular students because of characteristics that set them apart such as:
  - i. racist bullying that is usually aimed at minority ethnic groups;
  - ii. bullying of students with special needs;
  - iii. homophobic bullying that is directed at students because of their perceived or actual sexual orientation;
  - iv. sexual harassment that is unwelcome sexual attention that makes the recipient uncomfortable;
- c. can be physical
- d. can be verbal, including text bullying
- e. can be non-verbal, including rude physical gestures and manipulation to exclude or isolate a person.

ERO expects, as a matter of good practice, that each school will have:

- a. acknowledged that bullying behaviour is a risk to be managed;
- b. documented policy/procedures outlining their approaches to preventing bullying and managing bullying behaviour;
- c. carried out anonymous student surveys about student safety at school;
- d. provided training for staff in recognising and responding to bullying;
- e. provided appropriate guidance and counselling for students;
- f. implemented strategies/programmes/interventions to prevent/manage bullying;
- g. ascertained the success of these strategies/programmes/interventions.<sup>22</sup>

ERO published a report <sup>23</sup> about the bullying prevention and response guide. More recently, ERO updated its school trustees' booklet, which includes a section on student wellbeing. It outlines trustees' role in ensuring student wellbeing, and questions to guide internal evaluation of the effectiveness of wellbeing policies, procedures and practices in place.

Boards are required to meet minimum safety standards set out in legislation and conduct regular safety checks to identify and eliminate physical hazards.

The board should implement a maintenance programme to ensure that the school's buildings and facilities provide a safe and healthy learning environment for students.

## **Education and Training Act 2020**

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<sup>22</sup> For further information refer to *Safe Schools: Strategies to Prevent Bullying* [www.ero.govt.nz](http://www.ero.govt.nz).

*Student wellbeing*; [www.wellbeingatschool.org.nz](http://www.wellbeingatschool.org.nz); <https://ero.govt.nz/publications/bullying-prevention-and-response-in-new-zealand-schools-may-2019/>

<sup>23</sup> Download the complete report [www.wellbeingatschool.org.nz](http://www.wellbeingatschool.org.nz); <https://ero.govt.nz/publications/bullying-prevention-and-response-in-new-zealand-schools-may-2019/>

## Section 32 - Purpose of Part 3

*The purpose of this Part is to establish a schooling system that supports all learners/ākonga to gain the skills and knowledge they need to be lifelong learners/ākonga and fully participate in the labour market, society, and their communities by—*

*(a) ensuring that all children and young people are present in the schooling system to be able to exercise their right to an education, including setting up fair and consistent processes when students are excluded from the system that aim to return them to education as soon as possible; and*

*(b) supporting the **health, safety, and well-being of students***

## Section - 597 General principles

*(1) Every employer in the education service must—*

*(3) In addition to the requirements specified in subsections (1) and (2), each employer must ensure that all employees maintain proper standards of integrity, conduct, and concern for—*

*(a) the public interest; and*

*(b) the **well-being of students attending the place of education.***

## Section - 53 Courses, work experience, and visits outside school premises

*(1) A board may authorise any students to undertake courses of education, gain work experience, or make visits outside the school premises.*

*(2) If authorisation is given, the student must be treated as attending the school while undertaking the course, gaining the experience, or making the visit.*

*(3) A principal, a teacher, or an occupier of a workplace may not allow a student to go into, or remain in, a workplace to gain work experience except in accordance with any conditions prescribed by the Minister by notice in the Gazette.*

*(4) A student who is in any workplace to gain work experience is to be treated as being employed by the workplace, and every enactment and collective agreement (to **the extent that it relates to the health, safety, and welfare of workers**) applies to the student and the occupier of the workplace accordingly.*

The following provisions of the Education and Training Act 2020<sup>24</sup> also refer to health, safety and welfare of students

[98 Prohibition on corporal punishment and seclusion in registered schools](#)

[99 Limits on use of physical restraint at registered schools](#)

[100 Rules on use of physical restraint at registered schools](#)

[101 Guidelines on use of physical restraint and behaviour management at registered schools](#)

[102 Students at State schools may be released from tuition or for outside tuition](#)

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<sup>24</sup> Education and Training Act 2020



103 Students at State schools must receive guidance and counselling and their parents must be told about certain things

104 Required Police vetting

#### Subpart 4—Searches and surrender of property

105 Interpretation

106 Surrender and retention of property

107 Searches of clothing and bags or other containers

108 Restrictions on searches under section 107

109 Limits on sections 106 and 107

110 Prohibitions on searches by contractors

111 Refusal to produce, reveal, or surrender item

112 Power to search storage containers not affected

113 Rules about surrender and retention of property and searches

114 Guidelines about surrender and retention of property and searches

Schedule 4 - Police vetting

#### Relationship between the Education and Training Act 2020 and the Children’s Act 2014

**Note** the following clause 14 regarding Police vetting under the Education and Training Act 2020, and the requirements for vetting/ safety checking of staff under the Children’s Act 2014.

*Relationship with Children’s Act 2014*

Clause 14 Relationship with Children’s Act 2014

*Nothing in this schedule i.e [Schedule 4 - Police vetting](#) limits or affects Part 3 of the Children’s Act 2014 or regulations made under that Act in relation to the safety checking of children’s workers.*

**Note:** Compliance with legislative requirements on its own is not enough. Schools need to take a proactive approach to safety and develop high safety standards and expectations in consultation with parents and the school community. They need to consider the safety implications of all their decisions and continually review the steps they are taking to ensure safety. Principals and teachers play an important role in promoting a safe culture.

## Key Requirements

### Health and Safety at Work Act 2015 <sup>25</sup>

Under this Act, the school Board as the person conducting a business or undertaking (PCBU) holds the primary duty of care for, and manages risks to, the health and safety of workers and others arising from the work of the school. The Board will exercise its primary duty of care by ensuring the health and safety of:

- its workers (e.g. teachers, principals, administrators, property managers, volunteer workers etc.) while at school and on excursions and outside the classroom
- other workers who are influenced or directed by the Board
- others (e.g. students/children, parents, members of the public, and visitors to the premises), by ensuring they are not put at risk from work carried out by the school.

Officers are individual members of the board of trustees occupying a position that allows them to *exercise significant influence* over the management of the school, for example the school principal. Their role is to exercise *due diligence*, which means that they must take reasonable steps to ensure that the Board (as the PCBU) meets its health and safety obligations.

### What the school board should do to comply with the HSWA

There are a number of things your school should be aware of under the legislation:

- familiarise yourself with the key requirements of the legislation
- review your health and safety policies and practices
- identify health and safety risks in your workplace (a workplace includes any place where a worker goes, or is likely to be, while at work) and take all practicable steps to prevent these from causing harm
- make health and safety part of your workplace culture
- visit the MOE's dedicated health and safety webpage: [www.education.govt.nz/ministry-of-education/specific-initiatives/health-and-safety/](http://www.education.govt.nz/ministry-of-education/specific-initiatives/health-and-safety/) for guidance and updates

### Health and Safety Code of Practice

Under section 161 of the E&T Act, the Secretary for Education is able to prescribe terms and conditions, including minimum safety and health requirements under which school boards occupy land and buildings, regardless of whether the Crown owns or leases the land or not. The Ministry of Education has issued the *Health and Safety At Work Act 2015, A practical guide for boards of trustees and school leaders*.<sup>26</sup>

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<sup>25</sup> For further information refer: [health and safety practical guide for boards of trustees and school leaders](#), and [webpage](#)

<sup>26</sup> [Health and Safety Practical Guide for Boards of Trustees and School Leaders](#)

## Internet safety

For the purposes of NAG 5, boards must provide a safe physical and emotional learning environment. This includes a safe Internet environment.

A safe Internet environment is established in a school through:

- Proper infrastructure of policies, procedures and signed student and staff Use Agreements and Protocols;
- Effective systems maintenance (security, auditing, and possible filtering);
- Effective monitoring; and
- Education programmes for the school community.

All schools that have access to the Internet must have a Code of Conduct or Acceptable Internet Use Policy that sets out clearly what is considered appropriate use of the Internet. Lack of appropriate policies and procedures and effective monitoring can threaten the safety of a school.<sup>27</sup>

If a school is developing or updating its policy about the use of mobile phones or other digital devices, you can use OSAG's guidelines: [Digital Technology; Safe and responsible use in schools](#), and [Click here to get more info from the Netsafe website](#). Also refer to the MOE website - [Digital technology safe use guide for schools](#)

## Children's Act 2014 <sup>28</sup>

Under the Children's Act 2014, schools boards and kura, are required to put child protection policies in place. The policies will guide staff to identify and report child abuse and neglect.

There are legal requirements for vetting and screening<sup>29</sup> of all paid staff in the government-funded children's workforce (workers who have regular contact with children as part of their job). Children's workers are 'core workers' if they work alone with children or have primary responsibility for, or authority over children.<sup>30</sup>

**Note earlier comments:** the following clause 14 regarding Police vetting under the Education and Training Act 2020, and the requirements for police vetting/ safety checking of staff/workers under the Children's Act 2014.

### *Relationship with Children's Act 2014*

#### Clause 14 Relationship with Children's Act 2014

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27 The NetSafe Kit for schools (which builds on the Internet Safety Kit) is considered a 'model of best practice' by the Ministry of Education and is designed as a guide for schools to establish a cyberspace learning environment. See [www.netsafe.org.nz](http://www.netsafe.org.nz) for updates to the NetSafe kit.

28 For more information including [frequently asked questions](#) and <https://www.orangatamariki.govt.nz/assets/Uploads/Working-with-children/Information-sharing/Information-Sharing-Factsheet-OT-Act-1989.pdf> see the Children's Action Plan website [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz); and [Children's Act 2014 - a practical guide](#)

29 Children's (Requirements for Safety Checks of Children's Workers) Regulations 2015

30 Example: teachers, teacher aides, support staff who have regular contact with children at work.

Nothing in this schedule i.e [Schedule 4 - Police vetting](#) limits or affects Part 3 of the Children’s Act 2014 or regulations made under that Act in relation to the safety checking of children’s workers.

### Seclusion and physical force

New section 98 of the Act bans the use of corporal punishment and seclusion in schools. Seclusion can be physically and psychologically harmful, and is no longer considered an acceptable behaviour management strategy.

Sections 99 to 101 create a legal framework for the use of physical force in schools. This makes it clear to teachers and authorised staff members how and when they can use physical force, and puts safeguards in place to prevent physical force being used unreasonably or disproportionately<sup>31</sup>

### Education outside the classroom (EOTC)

Boards of trustees are legally responsible for the safety of students, staff and volunteers involved in education outside the classroom. They have legal obligations under general law and under legislation such as the Education and Training Act 2020, the Health and Safety at Work Act 2015 and the Crimes Act 1961.

Where an incident concerning safety occurs during an EOTC activity, a board’s legal liability will depend on how well it complied with its legal obligations when the school was planning and implementing the EOTC activity. If the school has planned well and followed accepted best practice guidelines, the board is much less likely to be considered legally liable for any safety incident that arises.<sup>32</sup>

### Food Act 2014/Food Regulations 2015

Under the Act, all schools must ensure the food they sell or serve is safe and suitable to eat. Depending on the type of food service provided, some schools will have additional obligations.<sup>33</sup>

### Building Act 2004

The Building Act establishes a series of minimum safety standards (building regulations) which must be complied with. The purpose of these regulations is to ensure all buildings and alterations are constructed to a standard that ensures the safety of occupants. Also refer [Property and school transport](#) [MOE’s website]

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31 Note the MOE has advised - *Until new rules and guidance are issued, schools should continue to follow the procedures set out in the existing rules and have regard to the current guidelines. When used, these will continue to help keep teacher practice safe. Where there are inconsistencies between the legislation and the guidelines about the threshold for when physical restraint can be used, the legislation takes precedence.*

<https://www.education.govt.nz/assets/Documents/School/Managing-and-supporting-students/Guidance-for-New-Zealand-Schools-on-Behaviour-Mgmt-to-Minimise-Physical.pdf>

32 Refer to [EOTC Guidelines – Bringing the Curriculum Alive](#)

33 Learn more about the new food safety law at Ministry for Primary Industries website ([mpi.govt.nz/food-safety/food-act-2014](http://mpi.govt.nz/food-safety/food-act-2014)), see *Examples of how the Food Act 2014 applies to education providers Factsheet*. Also refer- [Food safety for schools and kura \(Food Act 2014\)](#)

## Civil defence

The Ministry of Civil Defence & Emergency Management (MCDEM) has developed a National Civil Defence Emergency Management Plan 2015 and Guide to the National Civil Defence Emergency Management Plan 2015, which supports the Civil Defence Emergency Management Act 2002. These documents will have useful information in developing a policy to respond to emergencies and can be downloaded in PDF format from the MCDEM website ([www.civildefence.govt.nz](http://www.civildefence.govt.nz)).

The Ministry of Education has developed an Emergency Management Plan template which schools can use to develop their own Emergency Plan. Check end of page using hyperlink [here](#) - [Emergencies and traumatic incidents](#) and [Checking your property after a major incident](#).

[Education and Training Act 2020: New powers for the Secretary for Education when a state of emergency, transition period or epidemic notice is in place](#)

## Smokefree Environments and Regulated Products Act 1990

The purpose of this Act is to prevent, so far as is reasonably practicable, the detrimental effects of smoking and vaping on the health of any person who does not smoke or vape, or who does not wish to smoke, inside any workplace or in certain public enclosed areas. Schools are required to have smoke-free and vaping buildings and grounds at all times.

The total smoke-free and vaping ban includes school grounds during weekend sports games, fundraising activities, community days or evening classes, as well as when the grounds or buildings are rented out by other groups.

The changes also require that boards display smoke-free and vaping notices at every entry gate or building entrance, and that they take all reasonably practicable steps to ensure there is no smoking on their premises. For further details refer to - [Smokefree Environments and Regulated Products Legislation | Ministry of Health NZ](#)

You can use these resources to support, create or review your smoke-free and vaping policy. This will ensure your policy will align with requirements under the Smokefree Environments and Regulated Products Act 1990, Health and Safety at Work Act 2015 and the National Administration Guideline (NAG) 5.

[Vaping and schools – Health Promotion agency | Te Hiringa Hauora](#) (external link)  
[Smokefree for schools tools and resources - Smokefree website](#) (external link)

## Human Rights Act 1993

The Human Rights Act is to help ensure that people are treated fairly. It prohibits certain discriminatory practices in relation to the employment and treatment of employees and students.

The grounds of discrimination in section 21 of the Act include religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, sex, employment status, family status, sexual orientation and marital status.

Boards of trustees have obligations to ensure a safe learning environment where students are not subjected to racial or sexual harassment, or discrimination. Under the Human Rights Act, boards can be liable for harassment and discrimination committed by their employees. Boards can work

towards providing a safe physical and emotional learning environment for all by developing prevention of racial or sexual harassment, or discrimination policies and procedures for students and employees.

Section 102 of the Employment Relations Act 2000 provides for personal grievances under that Act. Under section 103 a personal grievance can be for racial or sexual harassment, or discrimination by the employer or a representative of the employer.

Under the Human Rights Act (section 69) and the Employment Relations Act 2000 a board of trustees may be liable for the occurrence of racial or sexual harassment, or discrimination of an employee by a student.

## Privacy Act 2020

The Act comes into effect on 1 December 2020.

Key reforms in the new Act include:

- Mandatory notification of harmful privacy breaches
- Introduction of compliance orders
- Binding access determinations
- Controls on the disclosure of information overseas
- New criminal offences
- Explicit application to overseas companies carrying on business in New Zealand.

[Read more here.](#)

Section 22 of the Act sets out the information privacy principles:

### [Information privacy principles](#)

The Privacy Act is designed to ensure that there are adequate safeguards in the way organisations (including boards of trustees) collect, use, store and disclose information about individual students, employees and job applicants. Section 22 of the Privacy Act sets out 13 information privacy principles that must be followed in relation to matters including:

- Information boards collect, hold and use about employees and job applicants;
- Information boards collect, hold and use about student enrolment, student achievement and other personal matters relating to students such as student behaviour and discipline.

Boards must ensure that they are familiar with the principles of the Privacy Act and that there are policies and procedures in place to ensure personal information is collected, stored, used and disclosed in accordance with those principles.

Section 201 of this Act requires every school to appoint as privacy officer one or more individuals responsible for ensuring the school complies with the provisions of this Act.

Boards and principals should understand the relationship between the need to protect personal information in terms of the Privacy Act and the requirement placed upon principals in section 103 of the Education and Training Act to take all reasonable steps to ensure that:

*“Students get good guidance and counselling; and....*

*A parent of the student is told of matters that, in the principal's opinion - are preventing or slowing the student's progress through the school; or are harming the student's relationships with teachers or other students."*

### New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act (NZBORA) provides for the safeguarding of rights in respect of such matters as:

- The right to the observance of the principles of natural justice.
- The right to be secure against unreasonable search or seizure, whether of the person, property, correspondence or otherwise.
- The right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.
- The right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.
- The right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.
- The right to be free from discrimination.

### Searching Students and Confiscation of Property

Provisions<sup>34</sup> in the Education and Training Act 2020 create a power for teachers and authorised non-teaching staff to require students to surrender items in their possession or control that are likely to endanger safety or detrimentally affect the learning environment. Items can include information stored in electronic devices. Surrendered items may be retained for a reasonable period or disposed of if appropriate. Teachers and authorised staff may also search clothing and bags or other containers subject to certain restrictions, and must comply with rules and guidelines regarding the surrender and retention of property and searches by schools issued by the Secretary for Education.

Teachers and authorised staff will not be permitted to search a student or to use physical force against a student or require a student to provide a bodily sample or to have a dog for the purpose of exercising a power.

### Education (Surrender, Retention and Search) Rules 2013<sup>35</sup>

These rules are made by the Secretary for Education and set out the practice to be followed by schools in respect of things that are dealt with by schools because they are items that endanger the safety of persons or detrimentally affect the learning environment (items) or because they are computers or electronic devices (devices) on which items are stored. The rules also require

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<sup>34</sup> Section 105 to 114. Also refer [Guidelines for the surrender and retention of property and searches](#)

<sup>35</sup> [Education \(Surrender, Retention and Search\) Rules 2013](#)

Also refer to [Digital technology: Safe and responsible use in schools](#) [PDF, 2.5 MB]

records to be made and kept of searches undertaken to locate items that are believed to pose an immediate threat to the physical or emotional safety of persons.

[Note: refer to [www.legislation.govt.nz](http://www.legislation.govt.nz) for sections 105 to 114 Part 3, [Subpart 4] of the Education and Training Act 2020 and the \*Education (Surrender, Retention, and Search) Rules 2013; [www.education.govt.nz](http://www.education.govt.nz) for guidelines issued by the Secretary for Education]. This Rules continue to apply under Schedule 1, clause 4 of the E&T Act 2020.

### [Education \(Surrender, Retention and Search\) Rules 2013](#)

#### [Guidelines for the surrender and retention of property and searches](#)

#### [Subpart 4—Searches and surrender of property](#)

### Hazardous Substances in school laboratories

The New Zealand Association of Science Educators (NZASE) has developed the Code of Practice for School Exempt Laboratories (the Code). This Code provides guidance on how schools comply with the Hazardous Substances and New Organisms Act and Regulations. The Code includes advice for schools about:

- managing school laboratories
- appointing laboratory managers
- laboratory manager’s responsibilities
- skills and knowledge required for laboratory managers and people in charge
- duties of people who are handling hazardous substances
- using hazardous substances in teaching

For further information, refer to the Code.<sup>36</sup>

### [Animal Welfare Act 1999](#)

The Animal Welfare Act 1999 has some implications for schools. Any individual or organisation involved in the manipulation of animals for the purposes of research, testing or teaching must have a code of ethical conduct. The Director-General of the Ministry of Agriculture and Forestry will approve such codes.

The Ministry of Education advises that schools that manipulate animals as part of their programmes need to enter into an arrangement and seek approval from an Animal Ethics Committee (AEC).

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<sup>36</sup> For more information about the code, go to the [Code of Practice for School Exempt Laboratories \(WorkSafe website\) \(external link\)](#). [HSNOCOP 15-1: School exempt laboratories \(PDF 556 KB\)](#)



[Caring for Animals](#) covers legal and ethical obligations when using or observing animals in science programmes. It also provides advice on care of various common animals.

[The New Zealand Science Teachers' Association \(NZASE\)](#) provides a code of conduct and guidance for teachers on both animal and human ethics.

Under the Animal Welfare Act 1999, research and teaching involving manipulating live animals may require ethics approval. This requirement also applies to animals used in schools and school activities.

NZASE has an [ethics committee that schools can use](#) when they require ethics approval.

The Science Learning Hub has an [ethics thinking toolkit](#), which provides a structured framework for scaffolding student thinking about an ethical issue.

### Firearms in Schools Guidelines

Current legislation allows firearms in schools under strict conditions. These guidelines are designed to support schools to have the correct policy and processes in place:

[Firearms in Schools Guidelines and Tool Kit](#)

[Quick guide to the Firearms in Schools Guidelines](#)

### Resource Management Act 1991

The purpose of this Act is to promote the sustainable management of natural and physical resources. The provisions of the Act, among other things, promote the health and safety of communities. For example, there are provisions to ensure that activities that may have adverse effects on the environment, are avoided.

School boards that discharge contaminants or use incinerators to dispose of rubbish, should ensure that they comply with local council bylaws.

### Hostels and off-site care – responsibilities of boards in state schools

The responsibility of boards to provide a safe physical and emotional environment for the children and young persons in their care includes situations where children and young persons are:

- Attending on-site or off-site courses or trips that are part of a school's educational programme; or
- In residential facilities associated with schools. These may include boarding schools, hostels, homestays, school camps or off-site courses or trips.

Boards are therefore also required to ensure that in the situations outlined above:

- All children and young persons are treated with respect and dignity and that they have their rights and needs met in a safe environment;
- Staff are aware of the relevant laws and regulations enacted to protect children and young persons from abuse;
- Staff are familiar with ways to prevent, recognise and respond to abuse; and
- Procedures are in place to protect students and staff from unwarranted allegations of abuse.

## Education (Hostels) Regulations 2005<sup>37</sup>

The purpose of these regulations is to help ensure the safety of students who board at hostels, prescribe minimum standards for premises and facilities, a code of practice relating to management of hostels, and a complaints procedure.

## International students

The Education Pastoral Care of Tertiary and International Learners Code of Practice 2021<sup>38</sup> replaced the existing mandatory Code of Practice for the Pastoral Care of International Students on 1 July 2016.

The new Code of Practice means:

- Education providers will be required to achieve 10 outcomes outlined in this new Code of Practice, following prescribed key processes.
- The Code Administrator, the New Zealand Qualifications Authority (NZQA), has new powers to sanction education providers who do not follow the code.

Schools cannot enrol international students without being a signatory to the Code of Practice. Schools with MFAT scholarship recipients or those running their own exchange programmes will need to become signatories to the code.

Boards that are signatories to the Code must ensure they are familiar with, and meet, the requirements of the Code, including the provisions relating to:

### Student welfare

- Support services for students
- Information on international students
- Communicating with parents for students under 18 years
- Students with additional needs
- Monitoring attendance to ensure student welfare

### Accommodation

- Accommodation Provisions
- Homestays

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<sup>37</sup> These regulations continue to apply under clause 4, Schedule 1 [Legislative instruments continued](#). Also refer to [Consequential amendments and revocations](#) [Schedule 26]

<sup>38</sup> [Education Pastoral Care of Tertiary and International Learners Code of Practice 2021](#)

- Boarding Establishments
- Designated caregivers
- Temporary accommodation
- Residential caregivers
- Police vetting of accommodation for students under 18 years

Boards must also ensure students know about and have access to adequate and fair procedures for dealing with grievances. Complaints procedures must be documented and implemented, and information about complaints procedures must be publicly available to international students.

### **COVID-19 Public Health Response Act 2020**

The COVID-19 Public Health Response Act 2020 was passed as standalone legislation to provide a different legal framework for responding to COVID-19. The Act allows the Minister of Health (or the Director-General of Health in specified circumstances) to make orders under section 11 to give effect to the public health response to COVID-19 in New Zealand.

- [COVID-19 Public Health Response Act 2020](#)
- [COVID-19 Public Health Response \(Vaccinations\) Order 2021](#)

The purpose of this order is to prevent, and limit the risk of, the outbreak or spread of COVID-19 by requiring certain work to be carried out by affected persons who are vaccinated.

Also refer See [COVID-19: Mandatory vaccinations](#) under Education sector.

- The [COVID-19 Public Health Response \(Protection Framework\) Order 2021](#) makes it clear that a person in control of designated education and care premises—

(a) must not deny entry, on vaccination grounds, to the following people if they are seeking to access education services at the premises:

- (i) a child or student enrolled at those premises; and
- (ii) a parent or caregiver of that child or student unless they are a volunteer or worker at the premises.

### **Section 654 - Power of Secretary to direct education entities**<sup>39</sup>

*(1) The Secretary may direct the governing body of an education entity (or the governing bodies of a class of education entities) to comply with any specified requirements—*

<sup>39</sup> [Education and Training Act 2020](#)

(a) to close or open the education entity or any part of it (including in relation to any specified category, class, or year group of students):

(b) to close or open the education entity for physical attendance or instruction, or both:

(c) to set restrictions on the attendance of students and those working at an education entity, having regard to any relevant employment or health and safety legislation:

(d) to operate, control, or manage the education entity:

(e) to provide education or instruction through the education entity in any specified ways.

(2) The Secretary may renew, amend, or revoke a direction while the relevant state of emergency, transition period, or epidemic notice is in force.

(3) [Schedule 25](#) provides for directions in relation to COVID-19.

### Directions

[653 Application and purpose of sections 654 to 658](#)

[654 Power of Secretary to direct education entities](#)

[655 Effect of directions](#)

[656 Publication of directions](#)

[657 Expiry of directions](#)

[658 Academic freedom unaffected](#)

[659 Power of boards to close schools](#)

### **Advice for schools/kura** [from MOE website]

- [COVID-19 Protection Framework advice for schools and kura](#)
- [COVID-19 Protection Framework resources for schools and kura](#)
- [Schools connected to a confirmed case](#)
- [Managing staff](#)
- [Ventilating schools](#)
- [Supporting learning progress – strategies and tools](#)
- [Advice for schools with international students](#)
- [NCEA remote assessment guidance and support during lockdown](#)
- [COVID-19 Dual tuition programme](#)
- [COVID-19 Alert Level advice](#)

### **COVID-19 and wellbeing**

- [Guidance for teachers](#)
- [Guidance for teachers, parents/caregivers and whānau](#)
- [Guidance for parents and whānau](#)
- [Health and wellbeing support for tertiary students](#)
- [Helping children and young people while they are learning at home](#)
- [Wellbeing webinars](#)



## Useful Resources

### [Health and safety practical guide for boards of trustees and school leaders](#)

NZSTA – Guidelines for Boards of Trustees, Health and Safety ([www.nzsta.org.nz](http://www.nzsta.org.nz)).

[Bullying prevention and response: A guide for schools](#)

[Safety and Technology Education: A Guidance Manual for New Zealand Schools](#)

[Specialised School Transport Assistance \(SESTA\)](#)

[Keeping students safe on school buses](#)

[Smokefree and vaping policy template for schools](#)

[Digital technology guide for schools](#)

[Health and Safety requirements for boards and school leaders](#)

### Health Conditions in Education Settings

<https://www.education.govt.nz/school/health-safety-and-wellbeing/student-and-staff-health/health-conditions-in-education-settings-supporting-children-and-young-people>

Netsafe Kit for Schools and other information on internet safety

<https://www.netsafe.org.nz/the-kit/>

### [EOTC Guidelines](#)

Guidelines for reporting suspected or actual child abuse and neglect

[www.education.govt.nz/assets/Documents/School/Traumatic-incidents-and-emergencies/MoE-STA-CYFProtocolForReportingActualOrSuspectedChildAbuseNov09Amendment-3-2015.pdf](http://www.education.govt.nz/assets/Documents/School/Traumatic-incidents-and-emergencies/MoE-STA-CYFProtocolForReportingActualOrSuspectedChildAbuseNov09Amendment-3-2015.pdf)

The Reporting process that Police follow for suspected or disclosed child abuse

[www.police.govt.nz](http://www.police.govt.nz)

New Zealand Fire Service Website: including information on Evacuation Procedures

<https://www.fireandemergency.nz/>

Guidelines to the Education (Hostels) Regulations 2005

Ministry of Education, February 2006

<https://www.education.govt.nz/assets/Documents/School/Running-a-school/Hostel-Regulations/Education-Hostels-Regulations-JUN-2019.pdf>

General Information on Internet Safety

[www.netsafe.org.nz](http://www.netsafe.org.nz)

Firewise for Schools

<https://www.fireandemergency.nz/teachers-and-schools/about-get-firewise/>

Evacuation Scheme Information

<https://www.fireandemergency.nz/business-and-landlords/evacuation-schemes/>

Pandemic Planning

<https://www.education.govt.nz/school/health-safety-and-wellbeing/emergencies-and-traumatic-incidents/pandemic-planning-guide/>

Sun Safety

[www.sunsmartschools.co.nz](http://www.sunsmartschools.co.nz)

[What needs to be notified in the education sector?](#)

Approved by Worksafe NZ, this resource supports the education sector to make decisions on what health and safety events do and do not need to be notified.

[Students on Work Experience: A health and safety guide for schools and employers](#)

Created for schools and employers to support them when students go on work experience, outside of a formal Gateway programme.

[Health and Safety Guidance for School Sport](#)

Created with SportNZ, regional sports co-ordinators and the Secondary School Sports Council.

[Code of Practice for School Exempt Laboratories](#)

New Zealand Association of Science Educators (NZASE) has worked with the Ministry to create this guide to support science educators.

[Download the guidance for New Zealand schools on behaviour management to minimise physical restraint](#)

## Section Four – Personnel Compliance Guide

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### Key Legislation

- Education and Training Act 2020
  - Employment Relations Act 2000 - Collective Employment Agreements (teaching and non-teaching staff)
  - Human Rights Act 1993
  - Criminal Records (Clean Slate) Act 2004
  - Protected Disclosures Act 2000
  - Teaching Council Rules 2016
  - Children’s (Requirements for Safety Checks of Children’s Workers) Regulations 2015
  - Privacy Act 2020
- 

### National Administration Guideline 3:

According to the legislation on employment and personnel matters, each board of trustees is required in particular to:

- (a) Develop and implement personnel and industrial policies, within policy and procedural frameworks set by the Government from time to time, which promote high levels of staff performance, use education resources effectively and recognise the needs of the students;
- (b) Be a good employer as defined by the State Sector Act 1988 and comply with the conditions contained in employment contracts applying to teaching and non-teaching staff.

### Introduction

One of the key activities for a board is related to the employment of staff. The level of student achievement is often dependent on the quality of staff employed.

The board should take all reasonable steps to provide a safe and positive working environment. It should be satisfied that all members of staff are performing in accordance with their employment agreements.

Under section 128 of the Ed & Training Act, a board may in accordance with the Public Service Act 2020, appoint, suspend, or dismiss school staff.

Under section 129 the powers conferred on a board by [section 128](#) include the powers to appoint, suspend, and dismiss a principal. Two or more boards may appoint 1 person to be the principal of 2 or more schools administered by the boards. A combined board may appoint 1 person to be the principal of 2 or more schools administered by the board.



## Key Requirements

### Children's worker – Safety Checks

Children's worker safety checks became law in the Children's Act 2014 (the CA)<sup>40</sup>, and applies to workers who are in core children's workforce roles and non-core children's workers.

Briefly, the following checks must have been completed where the board is seeking to employ or engage as a children's worker<sup>41</sup> (including as a contractor) for core children's workforce roles, and for non-core children's workforce roles:

- a. Identity verification - proof people are who they say they are, including previous identities
- b. Information requirement – reliable information about history and behaviour, which may include reference checks, interviews, and Police vetting
- c. Risk assessment – considered judgement based on the information collected
- d. Periodic re-checking – information to be updated and reassessed every three years.

The CA prohibits people with certain child abuse, sexual offending, or violence convictions from working in core worker roles. These are specified in the Act. Anyone convicted of the offences listed in the Act will not be able to work in core worker roles unless they are granted an exemption. The Ministry of Social Development manages applications for exemptions.

## Education and Training Act 2020

The following personnel provisions previously under the State Sector Act 1988 have been incorporated in the Education and Training Act:

### *Personnel provisions in relation to education service*

|     |                                |
|-----|--------------------------------|
| 597 | General principles             |
| 598 | Code of conduct                |
| 599 | Performance of teachers        |
| 600 | Equal employment opportunities |
| 601 | Employees in education service |
| 602 | Duty to act independently      |
| 603 | Appointments on merit          |
| 604 | Obligation to notify vacancies |

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<sup>40</sup> Download [Vulnerable Children Act 2014 - a practical guide](#)

<sup>41</sup> Example: teachers, teacher aides, support staff who have regular contact with children

|     |  |
|-----|--|
| 605 | Restriction of compensation for technical redundancy arising from closure or merger of schools |
| 606 | Appointment of employees following closure or merger of schools                                |
| 607 | Acting appointments  |

**Note:** Section 597 (1) of the Education and Training Act 2020 requires school boards, among other things, to operate a personnel policy that complies with the principle of being a good employer, and report in its annual report on the extent of its compliance.<sup>42</sup>

*Restrictions on appointment and continued employment of teaching staff*

**Section 92 - Restrictions on appointment of teachers**

(1) An employer may not appoint the following persons to a teaching position:

(a) a person—

(i) whose registration has been cancelled; and

(ii) who has not since been registered again:

(b) a person whose practising certificate is suspended under [section 498](#) or [500\(1\)\(d\)](#) or cancelled under [section 500\(1\)\(g\)](#):

(c) a person whose authorisation has been cancelled and who has not since—

(i) been authorised again; or

(ii) been registered as a teacher:

(d) a person whose limited authority to teach is suspended under [section 498](#) or [500\(1\)\(d\)](#).

(2) An employer may not permanently appoint a person to any teaching position if the person does not hold a practising certificate.

**Section 93 - Restrictions on continued employment of teachers**

(1) An employer may not continue to employ the following persons in a teaching position:

(a) a person—

(i) whose registration has been cancelled; and

(ii) who has not since been registered again:

(b) a person whose practising certificate is suspended under [section 500\(1\)\(d\)](#):

(c) a person whose authorisation has been cancelled and who has not since—

(i) been authorised again; or

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<sup>42</sup> The annual report must be available to the public on the website maintained by or on behalf of the board under section 136 of the Education and Training Act 2020 - [Annual report to be made available](#).

(ii) been registered as a teacher:

(d) a person whose limited authority to teach is suspended under [section 500\(1\)\(d\)](#).

(2) An employer may not continue to employ in a teaching position a person who holds neither a practising certificate nor an authorisation if the person is not under the general supervision of a person who holds a practising certificate.

(3) An employer may not, in any calendar year, continue to employ in a teaching position a person who holds neither a practising certificate nor an authorisation if the sum of the following periods is not less than the period specified in subsection (4):

(a) the period or periods for which that person has already during that year been employed by the employer in a teaching position or positions:

(b) any period or periods (of which the employer is aware) for which that person has already during that year been employed by any other employer in a teaching position or positions:

(c) any period or periods (of which the employer is aware) for which that person has during that year been employed as a teacher by the employer at an early childhood education and care service.

(4) The period is 20 half-days or any greater number of half-days the Teaching Council has allowed in any particular case, each being a half-day on which the school or early childhood education and care service at which the person was then employed was open for instruction.

#### **Section 95 - Restrictions on teachers subject to interim suspension**

(1) This section applies to a person employed in a teaching position if the person—

(a) holds a practising certificate that is suspended under [section 498](#); or

(b) has a limited authority to teach that is suspended under [section 498](#).

(2) The employer of the person—

(a) must ensure that the person does not carry out any of the duties of the teaching position concerned; and

(b) if the person is employed at a registered school or an early childhood education and care service, must take all reasonably practicable steps to ensure that the person does not undertake any activities that might bring them into contact with students enrolled at the school or children who attend the service.

(3) The person may not carry out any of the duties of the teaching position concerned.

#### **Section 96 - Further provisions relating to registration of teachers, practising certificates, and authorities to teach**

The registration of teachers, the issue of practising certificates, and the grant of authorities to teach must be done in accordance with [Schedule 3](#)

## **Minister must issue eligibility criteria relating to appointment of principals**

### **617 Minister must issue eligibility criteria relating to appointment of principals**

(1) The Minister must issue eligibility criteria that must be met by applicants for appointment to the position of principal for the purposes of—

(a) ensuring consistency in the skills, competencies, knowledge, and expertise that applicants for appointment to the position must demonstrate; and

(b) supporting better understanding of the background and experience needed for school leadership among persons aspiring to the role of a principal as part of their future career; and

(c) providing confidence to boards in making appointments; and

(d) signalling the importance of the role of a principal across the wider school system.

(2) Before issuing any criteria under subsection (1), the Minister must make reasonable efforts to consult—

(a) children and young people and their parents, whānau, and communities:

(b) national bodies representing the interests of—

(i) teachers:

(ii) principals:

(iii) boards:

(iv) the disability community:

(v) support staff in schools:

(vi) Māori education organisations:

(vii) proprietors of State integrated schools:

(c) national bodies with a particular role in respect of the character of designated character schools.

(3) The Minister may delegate the Minister's function under subsection (1) to any person or persons that the Minister thinks fit.

(4) In making an appointment to the position of principal, a board must apply any criteria issued under subsection (1) and may also apply any specific additional criteria developed by it under [section 618](#).

### **Board may develop additional criteria**

#### **618 Board may develop additional criteria relating to appointment of principals**

(1) A board may develop additional criteria relating to the appointment of a principal at the relevant board's school.

(2) Any additional criteria developed by the board must not be inconsistent with any eligibility criteria issued by the Minister under [section 617](#).

(3) In developing any additional criteria, the board must consult its school community.

### **9 Police vetting of non-teaching and unregistered employees at schools**

The board of a State school and the managers of a private school must obtain a Police vet of every person—

- (a) whom the board or the managers appoints, or intends to appoint, to a position at the school; and
- (b) who is to work at the school during normal school hours; and
- (c) who is not a registered teacher or holder of a limited authority to teach.

### **10 Police vetting of contractors and their employees who work at schools**

(1) The board of a State school and the managers of a private school must obtain a Police vet of every contractor, or employee of a contractor, who has, or is likely to have, unsupervised access to students at the school during normal school hours.

(2) In this clause, **contractor** means a person who works at a school under a contract for services.

### **11 Police vet must be obtained before person has unsupervised access to students**

(1) A Police vet required under [clause 9](#) or [10](#) must be obtained before the person has, or is likely to have, unsupervised access to students at the school during normal school hours.

(2) The board of a State school or the managers of a private school that is required under [clause 9](#) to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the school.

### **12 Further Police vets to be obtained every 3 years**

(1) The board of a State school and the managers of a private school must obtain a further Police vet of every person on whom a Police vet has already been obtained under [clause 9](#) or [10](#) by that board or management and who still works at the school.

(2) A further Police vet required under subclause (1) must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person.

(3) The requirement for a further Police vet under this clause does not apply to a person on whom a Police vet under [clause 9](#) or [10](#) would not be required if the person were about to be appointed to a position at the school or to work at the school at the time that the further Police vet would otherwise be required.

### **13 Procedures relating to Police vets**

The board of a State school or the managers of a private school that applies for a Police vet of a person—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) may not take adverse action in relation to a person who is the subject of a Police vet until—

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<sup>43</sup> Required Police vetting. [Schedule 4 Police vetting](#).

- (i) the person has validated the information contained in the vet; or
- (ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

**unsupervised access** <sup>44</sup>, in relation to children at a licensed early childhood service or students at a school, means access to any child that is not access by, or supervised by, or otherwise observed by, or able to be directed (if necessary) by, any 1 or more of the following:

- (a) a registered teacher or holder of a limited authority to teach:
- (b) an employee of the school or service on whom a satisfactory Police vet has been conducted within the last 3 years:
- (c) a parent of the student

## The Protected Disclosures Act 2000

All public sector organisations (including all state schools) must have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing.

Internal procedures and adequate information as to how to use the procedures must be published widely in the organisation and must be republished at regular intervals.

## Teaching Council Rules 2016 <sup>45</sup>

### Rule 4 – Overview

1. These rules—
  - a. provide preliminary provisions (see this Part); and
  - b. set out how to make a mandatory report or a complaint to the Teaching Council about a teacher (see [Part 2](#)); and
  - c. set out the criteria for reporting serious misconduct (see [Part 3](#)); and
  - d. provide a procedure for the chief executive to deal with reports and complaints about teachers in the first instance (see [Part 4](#)); and
  - e. provide for the practices and procedures of the disciplinary bodies when dealing with reports, complaints, and other matters (see [Parts 5 and 6](#)); and
  - f. provide for the practices and procedures of professional practice evaluators and the Competence Authority when dealing with matters relating to competence (see [Part 7](#)); and
  - (fa) provide for certain applications for teacher registration to be referred to a Registration Panel for determination (see [Part 7A](#)); and
  - g. establish the disciplinary bodies and the Competence Authority and include provisions about their membership and operation, and the membership and operation of the Registration Panel (see [Part 8](#)); and
  - h. provide for procedural requirements for Police vetting of applicants for registration as a teacher or for an authority to teach (see [Part 9](#)); and
  - i. revoke various rules (see [Part 10](#)).

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<sup>44</sup> Interpretation: section 10, Education and Training Act 2020.

<sup>45</sup> These rules continue to apply under clause 4, Schedule 1 [Transitional, savings and related provisions] Education and Training Act 2020. Refer - [Legislative instruments continued](#)

2. This rule is by way of explanation only, and, if any other provision in the Act or rules conflicts with it, the other provision prevails.

### Mandatory Reporting

Boards must immediately report to the Teaching Council when the board dismisses a teacher for any reason, or has reason to believe that a teacher has engaged in serious misconduct or has not reached the required level of competence. Boards should refer to sections 489 to 493 of the Education and Training Act 2020, and relevant Rules for details.

#### *Mandatory reporting*

|     |  |
|-----|--|
| 489 | Mandatory reporting of dismissals and resignations                   |
| 490 | Mandatory reporting of complaints received about former employees    |
| 491 | Mandatory reporting of possible serious misconduct                   |
| 492 | Mandatory reporting of failure to reach required level of competence |
| 493 | Mandatory reporting of convictions                                   |

### Criminal Records (Clean Slate) Act 2004

The Criminal Records (Clean Slate) Act 2004 applies to employment and any other situations where an individual is asked about his/her criminal record. The Act is designed to allow individuals with less serious convictions to put their past behind them. To be eligible under the Act an individual must meet all of the criteria in section 7 of the Act before all of their convictions can be concealed.

**Note:** These provisions do not affect the requirement by boards to police vet non-teaching, and unregistered employees, contractors and their employees under the Education and Training Act 2020.

### Employment Relations Act 2000

The object of the Employment Relations Act 2000 is to build employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and employment relationship. The Act requires that employers and employees deal with each other in good faith.

### Human Rights Act 1993

The Human Rights Act 1993 protects people from unlawful discrimination. The intention of the Act is to ensure that everybody is treated fairly in key areas of life, including employment.

Discrimination can be direct or indirect. Direct discrimination occurs when a person is treated unfairly or less favourably than another person in the same or similar circumstances. Indirect discrimination occurs when an action or policy that appears to treat everyone in the same way, actually has a discriminatory effect on a person or group. (Grounds of discrimination are defined in section 21 of the Act.)

The Act uses an expanded definition of 'employment'. It applies to employees, voluntary workers, people seeking work, and contract workers. This means the Act applies to a number of people who are not covered by other employment legislation, such as the Employment Relations Act 2000, which only applies to employees.

The Act covers advertisements, job applicants, employment opportunities and conditions for employees, and how employees leave their employment.

### Individual and collective employment agreements

Boards should ensure they are familiar with the terms and conditions of the relevant employment agreement that governs their relationship with employees.

### Teaching Council of Aotearoa New Zealand

#### **Section 96 - Further provisions relating to registration of teachers, practising certificates, and authorities to teach**

The registration of teachers, the issue of practising certificates, and the grant of authorities to teach must be done in accordance with [Schedule 3](#).

The *Code of Professional Responsibility*<sup>46</sup> issued by the Teaching Council applies to all certified teachers and those who have been granted a Limited Authority to Teach, in every role and teaching context. It is a set of aspirations for professional behaviour, and is binding on all teachers who hold a practising certificate and all authorised persons.

#### [Professional Growth Cycle for Principals, Tumuaki and ECE Professional Leaders](#)

The Professional Growth Cycle:

- reflects the profession's commitment to Te Tiriti o Waitangi and Our Code, Our Standards, Ngā Tikanga Matatika, Ngā Paerewa,
- is intended to create more equitable, contextually responsive access to opportunities for learning and growth than currently occurs through highly varied appraisal systems,
- promotes the use of research and frameworks while fostering new knowledge developed with colleagues about practices that make a positive difference for learners,
- encourages a collective responsibility for learning and quality teaching practice for all learners across the diverse contexts of Aotearoa.

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<sup>46</sup> Code of Professional Responsibility and Standards for the Teaching Profession.



**Refer to NZTC website:**

- [Elements to create a Professional Growth Cycle for principals, tumuaki and ECE professional leaders](#)
- [For the FAQs for principals, tumuaki and ECE professional leaders, click here](#)

[Looking for the te reo Māori version of this page?](#)

[Professional Growth Cycle for principals, tumuaki and ECE professional leaders](#)

[Professional Growth Cycle for teachers and kaiako](#)

[Resources to help create a Professional Growth Cycle](#)

[Overview of the transition from Appraisal to Professional Growth Cycle](#)

### Additional remuneration for principals

Section 578 of the Education and Training Act 2020 requires the Secretary for Education to provide a payroll service which Boards must use to pay staff unless the Secretary for Education otherwise authorises. The section also requires boards to keep all records and give the Secretary for Education all information necessary for the purposes of the payroll service.

Boards of trustees are required to obtain the written consent of the Secretary for Education (or the authorised delegate) before agreeing to pay additional remuneration to the principal. The need for consent arises because of requirements in the respective principals' collective and individual employment agreements (under section 586 of the Education and Training Act 2020) and section 580 of the Education and Training Act 2020 which prohibits boards paying all or any part of a teacher's salary (which includes the principal) without the Minister of Education's consent.

## Useful Resources

Refer to details of appointment processes and templates – NZSTA website – [www.nzsta.org.nz](http://www.nzsta.org.nz)  
and also [www.educationleaders.govt.nz](http://www.educationleaders.govt.nz)

Ngā Tikanga Matatika, Ngā Paerewa.

Code of Professional Responsibility and Standards for the Teaching Profession.

*Current Collective Employment Agreements*

[www.education.govt.nz](http://www.education.govt.nz)

## Section Five – Financial Compliance Guide

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### Key Legislation

- Crown Entities Act 2004
  - Education and Training Act 2020
  - Financial Reporting Act 1993
  - Public Finance Act 1989
  - Crown Entities (Financial Powers) Regulations 2005
- 

### National Administration Guideline 4:

According to legislation on financial and property matters, each board of trustees is also required in particular to:

- a. Allocate funds to reflect the school's priorities as stated in the charter;
- b. Monitor and control school expenditure, and ensure that annual accounts are prepared and audited as required by the Public Finance Act 1989 and the Education Act 1989;

### Introduction

Sound financial management and controls are essential to schools because they provide an effective framework for financial planning and safeguard the use of tax payers' money. They also provide transparency and mechanisms for accountability.

### Key Requirements

Section 550 of the Education and Training Act 2020 provides that every financial year Parliament will grant public money to boards of trustees for the purpose of running schools.

Boards of trustees are responsible for the management of this money and are also publicly accountable for how the money is spent.

### Boards are Crown Entities

#### **153 Application of Crown Entities Act 2004**

(1) A board is a Crown entity for the purposes of [section 7](#) of the Crown Entities Act 2004

(2) However, that Act applies to boards only to the extent that subsection (3) provides.

(3) The provisions set out in [Schedule 3](#) of the Crown Entities Act 2004 apply to boards and their Crown entity subsidiaries (within the meaning of that Act).

(4) A board must comply with any direction given under [section 107](#) of the Crown Entities Act 2004.

(5) If the board does not comply with a direction, it may be dismissed under [section 171\(1\)\(i\)](#).

### **Annual financial statements**

As Crown entities schools are subject to the requirements of the Education Act 1989 (Saving provisions), Crown Entities Act 2004 and the Financial Reporting Act 1993, and these Acts define the form and content of the financial statements that schools must present each year.

Public Sector Public Benefit Entity (PBE) financial reporting standards are mandatory for all state and state-integrated schools or kura. To help ensure compliance with these standards, schools or kura are required to prepare annual financial statements using the format outlined in the Kiwi Park School model. Section 87 (3)(AA) of the Education Act 1989 states “The annual financial statement in the Annual Reports must be in the form (if any) determined by the Secretary after consultation with the Auditor General”. The Secretary for Education has determined that schools should report in the format set out in the Ministry’s Kiwi Park model.

Section 87(3) of the Education Act requires financial statements to be prepared in accordance with generally accepted accounting practice and audited as required by section 87A of the Act.

Section 87A requires that each board must submit its annual financial statements to the Auditor-General within 90 days after the end of each financial year.

Under section 87C(1) a board must provide its audited annual financial statements to the Secretary of Education no later than 31 May in the year after the previous financial year.<sup>47</sup>

The annual financial statements (referred to as the Kiwi Park model financial statements), and related guidance, can be found on the [Ministry’s Managing school finances webpage](#)

### **Annual reporting**<sup>48</sup>

Boards are also required to report to the school community on their operations for the year. The annual report provides an opportunity for the school to report to the community – parents, students, and Parliament, and to publicly account for the ways it has used resources provided for the education of its students. The annual report is sent to the Ministry of Education as soon as practicable after the end of each financial year, and in any event no later than a day fixed by the Secretary of Education (section 87).

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<sup>47</sup> Note: section 87 of the Education Act 1989 continues to apply under clause 7, Schedule 1 of the Education and Training Act 2020. [Saving provisions](#)

<sup>48</sup> Note comments under footnote 45. Ministry of Education: Annual Reporting Circular, and [Financial Information for Schools Handbook \[DOC, 1.1 MB\]](#) and any updated version.

The annual report must include:

- a. The names of all the board's elected trustees, appointed trustees, and co-opted trustees; and
- b. The date on which each trustee goes out of office; and
- c. The auditor's report in accordance with section 87A;
- ca. A report, presented in the manner required by the Minister by notice in the *Gazette*<sup>49</sup>, on the total remuneration (including benefits, any compensation, *ex gratia* payments, any other payments, and any other consideration paid or payable in the school principal's capacity as an employee) paid to the principal of the school; and
- d. The total value of any compensation or other benefit paid or payable to persons who ceased to be trustees, committee members, or employees during the financial year in relation to that cessation and the number of persons to whom all or part of that total was payable; and
- e. The board's annual financial statements; and
- f. A statement in which schools provide an analysis of any variance between the school's performance and the relevant aims, objectives, directions, priorities, or targets set out in the school charter.

**Note:** A board is also required under section 597(1) of the Education and Training Act to report in its annual report on the extent of its compliance with the personnel policy that complies with the principle of being a good employer (including its equal employment opportunities programme).<sup>50</sup>

The legislation also requires that:

- Financial statements must be prepared in accordance with section 87(3) of the Education Act 1989;
- The annual financial statements in the annual report must be in the form (if any) determined by the Secretary after consultation with the Auditor-General;<sup>51</sup>
- Financial statements are sent to the school's auditor on or before 31 March; and that
  - Annual reports, including audited financial statements, are sent to the Ministry by May 31.

A board must ensure that its annual report is available to the public on an Internet site maintained by or on behalf of the board (section 87AB).

### Further information

School's planning and reporting from MOE website:

[Schools' planning and reporting checklist](#) [DOCX, 85 KB]

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49 New Zealand Gazette Notice No. 32, 3 February 2005, page 763.

50 [General principles](#)

51 Ministry of Education – Annual Reporting Circular and any updates

## Bank Accounts

All money received by a school must be paid into the school's bank account. The account must comply with the requirements of section 158 of the Crown Entities Act 2004, for example it must be held at a registered bank or building society that meets a relevant credit-rating test set out in Regulation 7<sup>52</sup> or approved by *Gazette* notice issued by the Minister of Finance. An up-to-date register of banks and building societies that meet the minimum requirements set out in the Act and Regulations is maintained on the MOE website.<sup>53</sup> School boards must properly authorize withdrawal or payment of money from their bank accounts.

In practice this means that school bank accounts must be in the name of the school only, and no income for the school can be paid directly to a service-provider trust, proprietor's account or the account of any other third party.

## Accounting Records

Section 168 of the Crown Entities Act 2004 requires school boards of trustees to ensure that accounting records are kept that:

- Correctly record and explain the transactions of the school; and
- Will at any time enable the financial position of the school to be determined with reasonable accuracy; and
- Will enable the trustees to ensure that the financial statements comply with generally accepted accounting practice; and
- Will enable the financial statements of the school to be readily and properly audited.

## Gifts to Boards of Trustees

Section 159 of the Education and Training Act provides that any money or property gifted to a school may be accepted or disclaimed by the board in accordance with section 167 of the Crown Entities Act 2004. This applies to any gift that is received by the board, which may include funding scholarships or bursaries, or for other educational purposes. The board must hold the gift for the specific purpose declared by the giver. It is good practice for a school to have a gift policy.<sup>54</sup>

## Investment in securities, borrowing, giving of guarantees and use of derivatives

There are also restrictions on investment in securities, borrowing, giving guarantees and indemnities or use of derivatives. If the board wishes to borrow money or give guarantees and indemnities or enter into derivative transactions, it should check compliance with sections 154/155/157 and 158 of the Education and Training Act 2020 and sections 160 to 164 of the Crown Entities Act 2004, and the

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<sup>52</sup> Crown Entities (Financial Powers) Regulations 2005.

<sup>53</sup> [www.education.govt.nz/goto/schoolbanks](http://www.education.govt.nz/goto/schoolbanks).

<sup>54</sup> see MOE 'Financial Information for Schools Handbook' and any updates.

Crown Entities (Financial Powers) Regulations 2005.

### Conflicts of Interest

Under clause 10, Schedule 23 of the Education and Training Act a trustee may be disqualified from continuing as a board member if they have a financial interest in contracts with the board that total more than \$25,000 in a financial year unless the trustee has declared a conflict of interest, excluded themselves while the board discusses the matter, and the board obtains prior approval from the Secretary for Education.

### No compensation for loss of office

Under section 182 of the Ed & T Act, a trustee is not entitled to any compensation, benefit or other payment when they cease to hold office as a trustee. However, if there is currently a contract or arrangement to receive compensation or other benefit, this continues to apply, but is to be cancelled on the date of reappointment.

### Whole of government directions

Boards must comply with any whole of government directions (from the Ministers of State Services and Finance) given under section 107 of the Crown Entities Act (for example a direction that all boards comply with e-government requirements to improve public services). If a board does not comply with a direction, it may be dismissed under s 171(1)(i) of the Act.<sup>55</sup>

### Payments by parents of students in state and state-integrated schools

There is no charge for education at state and state-integrated schools for students aged 5-19 years who are domestic students. Proprietors of integrated schools may charge a compulsory levy called “attendance dues” [clause 30, Schedule 6 Ed & Training Act 2020], which is approved by the Minister of Education and published in the New Zealand Gazette.<sup>56</sup>

### [Information about fees, charges and donations](#)

### [Notice of Exemption to Mandatory Condition \(external link\)](#)

### [Donations Scheme FAQs](#)

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<sup>55</sup> Refer section 153 [Application of Crown Entities Act 2004](#)

<sup>56</sup> Refer to MOE [Fees, charges and donations](#) Type Description Donations These are voluntary payments, no matter who...

<https://www.education.govt.nz/school/funding-and-financials/fees-charges-and-donations/>

[Requirements for boards of trustees of decile 1-7 schools and kura choosing to opt in to the Donations Scheme](#)

[Requirements for boards of trustees of decile 1-7 schools and kura choosing to opt in to the Donations Scheme \(A3 poster\)](#)

[Requirements for boards of trustees of decile 8-10 schools and kura and schools and kura choosing not to opt in to the Donations Scheme](#)

[Requirements for boards of trustees of decile 8-10 schools and kura and schools and kura choosing not to opt in to the Donations Scheme \(A3 Poster\)](#)



## Useful Resources

### [Managing school finances](#)

The handbook provides information to encourage best practice in financial governance, financial management and reporting.

<https://www.education.govt.nz/assets/Education-and-Training-Act-2020/Financial-Information-for-Schools-Handbook-revised-21-September-2020.pdf>

### *Funding, Staffing and Allowances Handbook*

Ministry of Education

<https://www.education.govt.nz/school/funding-and-financials/resourcing/>

### *NZSTA Trustee Handbook*

see <http://www.nzsta.org.nz/>

Ministry of Education

<https://www.education.govt.nz/school/funding-and-financials/resourcing/school-staffing/banking-staffing/>

### [Funding and financials](#)

## Section Six - Asset Management Compliance Guide

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### Key Legislation

- Building Act 2004
- Education and Training Act 2020
- Building (Pools) Amendment Act 2016
- Fire and Emergency New Zealand Act 2017
- Resource Management Act 1991
- Fire and Emergency New Zealand Act 2017
- Fire Safety, Evacuation Procedures, and Evacuation Schemes Regulations 2018
- Prohibition of Gang Insignia in Government Premises Act 2013

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### National Administration Guideline 4:

c) Comply with the negotiated conditions of any current asset management agreement, and implement a maintenance programme to ensure that the school's buildings and facilities provide a safe, healthy learning environment for students.

## Introduction

The land and buildings from which a state non-integrated school operates is owned by the Crown and vested in the Ministry of Education. The board of trustees is responsible for maintaining the

land, buildings and other facilities on the school site in good order and repair, thus positively contributing to a safe and healthy learning environment for students.<sup>57</sup>

The purpose of this section is to focus the board's attention on the provision of a safe and healthy physical environment. This section also covers matters such as the safe evacuation of staff and students from buildings in times of emergency.<sup>58</sup>

## Key Requirements

### Education and Training Act 2020

Section 161 of the Education and Training Act provides that the Secretary for Education may specify terms and conditions subject to which boards occupy land and buildings owned by the Crown.

Such documents include the property occupancy document issued by the Secretary for Education to boards of state (non-integrated) schools.

The Ministry of Education's Property Management Handbook comprehensively explains the responsibilities of boards and the Ministry in caring for school property, and contains useful information, guidelines, and best practice ideas to help boards manage school property.

### Ministry of Education: Property Occupancy Document

The terms and conditions for boards of all state schools occupying land and buildings, are specified in the form of a Property Occupancy Document, issued under the Education and Training Act by the Secretary for Education<sup>59</sup> to all state schools, as an appendix to the Property Management Handbook available on the Ministry's website.

Clause 5a of the Property Occupancy Document [POD] states that:

The Board is responsible for all maintenance of the property at the school no matter who owns it. The board must maintain the school property in good order and repair at all times and to a standard that meets current trade standards of workmanship, complies with all relevant New Zealand legislation and codes, and all current Ministry design requirements.

Clause 7a of the POD requires boards to engage a project manager to carry out, or review and certify, a condition assessment of the school buildings and facilities before preparing, or reviewing and certifying, a 10-year Property Plan [10YPP]. Boards are responsible for the care of playgrounds and playground equipment. The design and maintenance of play areas and playground surfacing is covered by the joint Australian/New Zealand standards, and also New Zealand standards issued by Standards New Zealand. As these standards are always being refined, boards should check with Standards New Zealand for current guidelines.

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<sup>57</sup> [State schools property management](#)

<sup>58</sup> [Checking your property after a major incident](#)

<sup>59</sup> Note: the relevant provision is now s 161 of the Education and Training Act. [Property Occupancy Document for state \(non-integrated\) schools \[DOC, 288 KB\]](#)

The Ministry requires that the design and proposed construction of any playground be approved by a territorial authority building inspector. On completion of the work, the playground must be inspected before a code of compliance is issued.

### Use of off-site locations by schools

Section 117 of the Ed & Training Act requires schools to seek the approval of the Minister of Education to use an off-site location or host an off-site location for another school.<sup>60</sup> This is to formalise arrangements for off-site locations and make it clearer who is responsible for the education, safety and welfare of the students receiving education at the off-site location.

An off-site location is when a school is using premises outside of the school to provide education to one or more students on a long-term or full-time basis.

### Integrated schools

The relationship between integrated schools and the Ministry of Education regarding asset management is governed by the individual school's integration agreement between the MOE (on behalf of the Minister) and the school's Proprietor.

The Proprietor, as owner of the land and buildings, is responsible for the property and receives Crown funding on a per pupil basis for major capital works and maintenance that is outside the responsibility of the school board. The board receives maintenance funding to cover its responsibilities.<sup>61</sup>

Capital works projects are governed by the Ministry policy "Capital Work Projects at Integrated Schools", which specifies the protocol between the Ministry and the proprietor and sets minimum standards for asset management.

The minimum standards include property being safe, in a fit state of repair, and compliant with all statutory, regulatory, and Ministry design standards. The policy is issued pursuant to clause 39, Schedule 6 of the Ed and Training Act 2020. Clause 39, Schedule 6 of that Act allows the Minister of Education to require a proprietor to undertake work to ensure minimum standards are maintained.<sup>62</sup>

Refer to [Maintenance funding for integrated schools](#) and [Capital funding for integrated schools](#) [MOE website]

### Building Act 2004

The Building Act establishes a series of minimum safety standards (building regulations) that must be complied with. The purpose of these regulations is to ensure all new buildings and alterations are constructed to a standard that ensures the safety of occupants. Section 3 states:

"This Act has the following purposes:

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<sup>60</sup> Schools must get approval through the MOE.

<sup>61</sup> [Integrated schools property planning](#)

<sup>62</sup> Note: the Private Schools Integration Act 1975 has been repealed, and relevant provisions incorporated into the Education Act 1989 from 19 May 2017.

- a. to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings, to ensure that—
  - i. people who use buildings can do so safely and without endangering their health; and
  - ii. buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
  - iii. people who use a building can escape from the building if it is on fire; and
  - iv. buildings are designed, constructed, and able to be used in ways that promote sustainable development.
- b. to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.”

Sections 117 to 120 of the Building Act require building owners to ensure access, facilities and signage are in place to cater for the needs of disabled staff, children and visitors when constructing a new building or altering any building.

### Capital Works/Maintenance [State non-integrated schools]

The POD sets out in clauses 1 and 5 what the Ministry and boards are responsible for in terms of capital works and maintenance.

Refer to MOE website : [Property Maintenance Grant for state school maintenance work](#) and [Capital works — state schools](#)

### Fire and Emergency New Zealand Act 2017/Fire Safety, Evacuation Procedures and Evacuation Schemes Regulations 2018 <sup>63</sup>

All schools need to have an evacuation procedure or scheme in place to ensure the safe and efficient evacuation of occupants in a fire emergency. The safe evacuation of persons with disabilities to an external place of safety is a critical requirement. Schools must place signs and notices at appropriate points across the school so that the evacuation procedure is clear.

The requirements are set out in the Fire Safety and Evacuation of Buildings Regulations 2006 and new regulations that came into effect from 1 July 2018.

Schools which have less than 100 students and staff should have a fire safety and evacuation procedure in place. The procedure must include:

- a. a site plan for the whole school showing assembly points outside the building
- b. the escape routes to follow to get to the assembly points
- c. maintenance of the escape routes

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<sup>63</sup> Note: The *Fire and Emergency New Zealand Act 2017* applies from 1 July 2017 and there will be a transitional period for the current Act/Regulations to continue to apply.

- d. the fire alarms signals to be used at the school
- e. details of the firefighting equipment occupants can use.

Schools which have more than 100 students and staff must have a FENZ approved evacuation scheme in place. A school should take time to carefully consider how it will effectively manage an evacuation in a fire emergency, including setting out the specific details for the evacuation of persons with disabilities to an external place of safety. An evacuation scheme must include:

- a. what to do if you discover a fire
- b. what to do if you are alerted to a fire
- c. where the assembly points are and how to get to them
  
- d. provision for evacuating: members of the public who may be at your school; young children; the elderly, and the sick; students and others with disabilities and residential units.

The regulations require all school staff to be trained to assist others to evacuate in accordance with the evacuation procedure for the school.

Boards of trustees, as occupiers of buildings, are required to prepare an evacuation scheme for the approval of the National Commander. Evacuation drills are required at intervals of not more than six months (Regulation 17(g)(i) and notices are required to be posted in buildings showing how to get out of the building and the evacuation procedure.

Evacuation scheme application forms are available from the local Area Fire Safety Department of the New Zealand Fire Service.

## Civil defence

[refer to earlier comments in SECTION THREE under same heading]

## Building (Pools) Amendment Act 2016

The above Act came into effect on 1 January 2017 and repealed the Fencing of Swimming Pools Act 1987 and included new pool safety provisions in the Building Act 2004.

The following information is from MOE website:

You must have fences and signage that meet the legal requirements and design standards set out in:

- [Health and Safety at Work Act 2015](#) (Legislation website)
- [Building Act 2004](#) (Legislation website)
- [Building Code \(including the new Clause F9 for pool fencing\)](#) (Building Performance website)
- [NZS 8500:2006 'Safety barriers and fences around swimming pools'](#) (Standards NZ website)
- [NZS 5826:2010 'Pool water quality' — Standards NZ website](#) (external link)

### **Prohibition of Gang Insignia in Government Premises Act 2013**

This legislation makes the display of gang insignia on school premises an offence and gives the police powers to arrest or seize people displaying patches on school grounds. Gang insignia means a sign, symbol, or representation commonly displayed to denote membership of, an affiliation with, or support for a gang, not being a tattoo; and includes any item of clothing to which a sign, symbol, or representation is attached.

For more information refer to [www.education.govt.nz](http://www.education.govt.nz) under Prohibiting gang insignia on school property.

## Useful Resources

### *School Property Guide*

Ministry of Education

[www.education.govt.nz/school/property/state-schools/funding/school-property-guide-funding](http://www.education.govt.nz/school/property/state-schools/funding/school-property-guide-funding)

### *Property Management Handbook and Quick Reference Guide 2007*

[www.education.govt.nz](http://www.education.govt.nz)

### *Department of Building and Housing Website*

[www.dbh.govt.nz](http://www.dbh.govt.nz)

### *New Zealand Fire Service Website: including information on Evacuation Procedures*

<https://www.fireandemergency.nz/>

### *Undercover Guidelines for Shade Planning and Design*

Cancer Society of New Zealand

<https://cancernz.org.nz/assets/Sunsmart/Sunsmart-resources/Guidelines-Under-Cover.pdf>

### *Pool Water Quality – Schools: NZS 5826:2000*

Standards New Zealand

[www.standards.co.nz](http://www.standards.co.nz)

### *School Pools – Board of Trustees Obligations*

Poolsafe, Watersafe New Zealand and ACC

[www.poolsafe.org.nz](http://www.poolsafe.org.nz) and go to 'school pools'

## Ministry of Education Circulars

### [10 Year Property Plan](#)

Guidelines on Developing a 10 Year Property Plan.