

12 December 2012

IM60/117/52/3

**Education Report: Response to the Judicial Review  
judgement about the closure of Salisbury  
School**

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**Recommendations**

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**We recommend that you:**

- a. **confirm** that the expansion of the Intensive Wraparound Service remains one of your priorities for 2013;

~~YES/NO~~

- b. **agree** to the Ministry providing you with further advice on:

- a. the evidence provided at the judicial review hearing about the safety for girls in a coeducational residential setting;
- b. current literature and evidence on the potential increased risks in a residential coeducational setting to girls with an intellectual impairment;
- c. policies, processes and programmes at Halswell that provide the most effective support for both girls and boys in a residential coeducational setting; and

~~AGREE/DISAGREE~~

- c. **note** that any decision on the future of Salisbury School should be made after consideration of the issues raised by the judgement from the judicial review.

Brian Coffey  
Group Manager, Strategy Special Education  
Early Years and Learning Support

Hon Hekia Parata  
Minister of Education

## **Education Report: Response to the Judicial Review judgement about the closure of Salisbury School**

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### **Purpose of report**

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1. As requested, this report outlines our proposed response to the issues arising from the judicial review of your decision to close Salisbury School.

### **Background**

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2. In May 2012, we consulted widely on the future of residential special schools in the context of developing and extending the new intensive wraparound special education service for learners with complex behavioural, social, and education needs and for those learners who also have an associated intellectual impairment.
3. On 23rd August you made your preliminary decision that Halswell Residential College (for learners with complex behavioural needs and intellectual impairment) and Westbridge Residential School (for learners with complex behavioural needs) would remain open and operate as national, co-educational schools.
4. The remaining two residential specials schools, Salisbury School (Nelson) and McKenzie Residential School (Christchurch) were to close. Following your preliminary decision, an additional 28 day period was given for the Boards of these two schools to submit additional information for you to consider. On 31 October 2012 you announced that you had upheld your preliminary decision to close both schools.
5. The Board of Trustees for Salisbury School subsequently applied for a judicial review of this decision on the grounds that you acted unlawfully under section 98 (2) of the Education Act 1964, in that you failed to consider sufficient provision has been made.
6. The judicial review was heard in the High Court on 27 November and the reserved judgement was made on 11 December 2012.

### **Outcome of the judicial review**

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7. The grounds of challenge and key issues raised in the judgment are:
  - The first ground of challenge was that you failed to make the section 98 threshold of sufficiency because you failed to do a 'girl by girl' analysis of alternatives. The judge rejected this approach and supports this aspect of your decision.

- The next ground of challenge was that Halswell would not be able to take a significant number of girls in 2013 in comparison to the number of boys enrolled at the school. This challenge succeeded on the basis that the law prevents a decision that puts at risk the single sex character of the school if the proportion of girls at the school exceeds or is near to the number of boys.
  - The final challenge was to the potential for the girls from Salisbury to be at greater risk of sexual abuse if enrolled at Halswell. The judge was critical of our advice to you about the risk of sexual assaults as taking too narrow an approach to the available evidence about young people with intellectual impairment generally. The failure here was that you were required to consider the protection of girls from physical and sexual abuse if placed in the coeducational setting at Halswell and that you did not properly or sufficiently consider this.
8. As a result of this judgement your decision to close Salisbury School has been found unlawful and therefore needs to be made again. The judgement identifies two discrete issues to be reconsidered before you can remake your decision:
- The safety of girls with an intellectual impairment in a coeducational setting and any possible increased risk to them from boys at Halswell Residential College
  - The ability and process to make Halswell coeducational.

### Proposed response to the judicial review

#### **Status of Salisbury School**

9. The judgement means that Salisbury School will remain open in 2013.
10. We recommend that Salisbury School remains open for the girls currently enrolled at the school who expect to return in 2013 for their second, and final, year at the school.
11. As a consequence we will reduce the 2013 notional roll for the school from 80 to 40 to better reflect the number of girls who will be enrolled at the beginning of the new school year. We expect that this notional roll will be more than the number of girls who do attend the school in 2013.
12. This reduction in the notional roll for Salisbury mirrors a similar reduction made to the 2013 notional roll and funding for Halswell School. Halswell's notional roll has been reduced by one third in anticipation of the school becoming the single national coeducational school for learners with complex behavioural needs and intellectual impairment. The Resourcing Notice giving effect to this reduction has already been sent to Halswell.
13. We have advised the Board Chair of Salisbury that we will send the appropriate Resourcing Notice to her by 21 December 2012.

### **Status of Halswell College**

14. It is clear from the Judge's decision that Halswell can take girls from 2013 providing they are a significantly lower proportion than boys to retain the single sex nature of the school. Halswell's Board has indicated clearly that it wants to take girls from term 3, 2013 and can provide a safe environment for them.
15. We recommend that before girls are enrolled at Halswell we address the issues of safety raised by the judicial review. Making Halswell coeducational should be reconsidered once you have reconsidered the future of Salisbury School and made your final decision.
16. The plans for refurbishment and alterations required by Halswell to become coeducational can still be carried out with a later completion date than previously intended.

### **Impact on the ability to expand the Intensive Wraparound Service**

17. Salisbury School remaining open in 2013 will mean less funding available to expand the Intensive Wraparound Service. From our preliminary assessment of the amount of funding freed up from closing McKenzie School and reducing the notional roll for Salisbury we calculate that there would be about 2-3 less full-time employees than previously planned for and approximately 20-30 less learners able to benefit from the service.
18. We seek your confirmation that expanding the Intensive Wraparound Service remains one of your priorities for 2013.

### **Next Steps**

19. Additional evidence given at the judicial review hearing in an affidavit by Freda Briggs alleged widespread sexual abuse had occurred at Halswell in the early 2000s. It was then suggested that boys at Halswell were therefore potential abusers, and as girls who are intellectually impaired are more vulnerable to abuse, there is an increased risk to girls in a residential coeducational setting.
20. We propose that you first reconsider the safety of girls with an intellectual impairment in a coeducational setting and any possible increased risk to them from boys at Halswell College.
21. To do this, we propose providing you with further advice in early March 2013 on the:
  - facts of this allegation and assumptions that have been made
  - current literature and evidence on the potential increased risks in a residential coeducational setting to girls with an intellectual impairment
  - policies, processes and programmes at Halswell that provide the most effective support for both girls and boys in a residential coeducational setting.

22. We will consult on your behalf with the Board of Salisbury to see if it has any additional information to what has already been put before the court for you to consider.
23. You may also wish to seek independent advice on the risks to these learners in a coeducational environment. Should you decide to do this we can provide you with some suggestions on who may be able to undertake this for you.
24. Once you have reconsidered the safety of girls we recommend you then reconsider your decision to close Salisbury School and to make Halswell a coeducational school.
25. Our report to you in March 2013 will also include advice on this including the statutory processes involved.