



## Education Report: Seeking agreement to issue a code of conduct for state school board members

<b>To:</b>	Hon Jan Tinetti, Minister of Education		
<b>Date:</b>	9 February 2023	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1302713
<b>Drafter:</b>	Caprice Seccombe	<b>DDI:</b>	9(2)(a)
<b>Key Contact:</b>	Ben O'Meara	<b>DDI:</b>	
<b>Messaging seen by Communications team:</b>	Yes	<b>Round Robin:</b>	No

### Purpose of report

This paper seeks your agreement to issue a code of conduct for state and state-integrated school board members [Annex 2].

### Summary

1. Section 166 of the Education and Training Act 2020 (the Act) enables the Minister of Education to issue a code of conduct for members of all state and state-integrated school boards. The code will set out minimum standards of conduct that each board member is required to meet.
2. On 28 September 2022, you and Minister Hipkins agreed to publicly consult on the draft code [METIS 1269847 refers]. Following your agreement, we consulted the public via an online survey between October and December 2022 and received 455 survey responses with broad support for the code and its clauses [METIS 1302008 refers].
3. The code received near unanimous levels of agreement for the clauses as they were presented to the public during consultation. However, feedback also highlighted potential areas for change. Submitters were concerned that the wording implied a requirement to support all opinions of their fellow board members without opportunity for dissent. They were also concerned about the meaning of political impartiality. Furthermore, there was a call to add more explicit references to Te Tiriti o Waitangi and the governance role of school boards. We have addressed these ambiguities and added reference to governance and Te Tiriti o Waitangi in the clauses and introductory text of the code.
4. We are now seeking your agreement to issue the code of conduct [Annex 2].
5. Operational guidance for the sector will be developed and be ready for release when the code is issued.

## Recommended Actions

The Ministry of Education recommends that you:

- a. **note** that the Ministry consulted publicly on a draft code of conduct for state and state-integrated school board members and has revised the code of conduct based on the feedback received

**Noted**

- b. **agree** to the content of the revised code of conduct

**Agree / Disagree**

- c. **agree** to issue the code of conduct by notice in the *Gazette*

**Agree / Disagree**

- d. **note** that the code of conduct is secondary legislation, and you will need to present it to the House

**Noted**

- e. **note** that the Ministry will prepare guidance to support implementation, and work with your office to support any announcements as required

**Noted**

## Proactive Release Recommendation

- f. **agree** that the Ministry of Education release this briefing in full once it has been considered by you.

**Agree / Disagree**

Ben O'Meara  
Group Manager  
Te Pou Kaupapahere  
09/02/2023

  
Hon Jan Tinetti  
Minister of Education  
26/03/2023

With change to 13 as below

I am politically impartial in my role as a board member.

I do not endorse or campaign for a political party or candidate in my capacity as a school board member.

## Background

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1. As part of the Tomorrow's Schools Reforms [SWC-19-MIN-0153 refers], provisions for a mandatory national code of conduct for state and state-integrated school board members have been included in Sections 166 – 169 of the Education and Training Act 2020 (the Act). A mandatory code was recommended by the Tomorrow's Schools Review Taskforce in response to reports about behavioural issues arising occasionally within boards, particularly members seeking to progress their own interests rather than those of the board.
2. The key provisions in the Act include:
  - a. Section 166, which enables the Minister of Education (the Minister) to issue a mandatory code for the board members of state and state-integrated schools.
  - b. Section 167, which allows boards to expand on the standards in the code issued by the Minister with additional standards of conduct, as long as they are consistent with the standards set in the code issued by the Minister and the Act.
  - c. Section 168, which obliges board members to comply with any code issued.
  - d. Section 169, which allows boards to censure a member or request that the Minister remove a member for significant or persistent breaches of the code (including any additional standards added by the board under Section 167).
3. Section 166 of the Act states that before issuing a code of conduct, the Minister must consult with the national bodies representing the interests of boards and may consult any other persons or bodies that the Minister thinks fit. As detailed in the sections below, the most recent public consultation fulfils this legislative requirement.

## Development of the Code of Conduct

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4. Minister Hipkins agreed to a set of objectives for the code [METIS 1227279 and 1264337 refer] and added to these more recently [METIS 1269847 refers] so that the following objectives would guide the development of the code of conduct:
  - a. To encourage community and child-centred decision-making and engagement.
  - b. To help achieve stronger relationships between board members, principals, school staff and the wider school community.
  - c. To develop a culture of mutual trust, respect and tolerance between members of the board.
  - d. To provide clear minimum behaviour and conduct expectations, using clear and easy-to-understand language.
  - e. To ensure consistency, transparency, and accountability for the conduct of board members.
  - f. To be flexible enough to allow for creativity, diversity and difference of approach.
  - g. To be clear enough to allow boards to detect and take action on a breach.
  - h. To provide for individual accountability.
  - i. To recognise that, because the consequences of a breach could result in removal from a board, the standards set should be fair to board members with differing capability levels.
  - j. To underpin conduct expectations with Te Tiriti o Waitangi expectations.

- k. To align conduct expectations as much as possible with those of conduct expectations on other Crown entity board members.
  - l. To ensure board members cannot pursue their own personal beliefs and interests to the detriment of students, the school and the community.
5. We worked closely with the New Zealand School Trustees Association (NZSTA) to develop the draft code with simple, non-punitive, and strengths-based language. As a result, the code refers only to the expected behaviours of the individual board members and does not hold individuals to account for the board's collective responsibilities.
  6. On 12 July 2021, Minister Hipkins agreed to NZSTA seeking feedback from its members on a draft of the code [METIS 1264337 refers].
  7. The feedback from NZSTA members was generally positive and supportive of the code. Based on their comments, we revised the draft code to enhance enforceability, incorporate expectations to meet Te Tiriti o Waitangi obligations, make clearer individual board member responsibilities, and address concerns about board members pursuing their personal beliefs and interests to the detriment of students [METIS 1269847 refers]. It was following this revision and your agreement on 28 September 2022 that the code went to public consultation.

#### Consultation Feedback on the Code

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8. The Ministry consulted the public via an online survey which was open for five weeks between 17 October and 4 December 2022. We also allowed email responses as an alternative means of submitting feedback. The draft code was provided online in Te Reo Māori, English, New Zealand Sign Language, Sāmoan, Simplified Chinese, and Tongan, and accessible formats. In total, 455 survey submissions and five emails were received. Submitters included principals, teachers, parents, school board members, students, and peak bodies [METIS 1302008 refers].
9. Each clause in the draft code received overwhelming support from survey submitters [Annex 1]. All clauses received "agree with inclusion" or "strongly agree with inclusion" ratings from at least 89% of submitters. Ten of the 15 clauses received 95% agreement or higher, and two had a support level of 98%. The level of disagreement towards the inclusion of any one clause never exceeded 5%. Approximately half of the submitters gave further commentary.
10. Five peak bodies or representative groups provided submissions. Three of these groups, 9(2)(ba) the New Zealand Area Schools Association, and the 9(2)(ba)(i) strongly agreed with including all 15 clauses in the draft code. The Waitakere Area Principals' Association strongly agreed with including all clauses except clause 13, "I am politically impartial in my role as a board member," and clause 14, "I meet statutory and administrative requirements". Their feedback for these clauses asked for further clarity and strength of meaning. The New Zealand Educational Institute stated that they were "overall" supportive of the direction of the code of conduct, but desired more explicit reference to Te Tiriti o Waitangi.
11. Of the 15 clauses, clauses 4, 6 and 13 generated the most feedback.
12. Clause 4, "I support my fellow board members and character of my school," received 90% support for inclusion in the code. However, the original wording was interpreted by many submitters, particularly parents and teachers, as meaning an individual would have to support all of their fellow board members' views and beliefs. We changed the

wording to “I am respectful of...” to clarify that this clause is more about acting respectfully than it is about having to support all viewpoints. We have also indicated that potential disagreement is possible as long as members maintain respectful conduct.

13. We also clarified in the heading of clause 4 that the “character” the board member must act consistently with is the special or designated character of the school. Under the new clause, board members must act consistently with the special or designated character of their school, but are under no obligation to act consistently with any other “character” that is not officially designated nor agreed to in an integration agreement. For example, a school may have an informally recognised “character” that may be non-inclusive to certain identities – this clause does not mean that board members must (or should) act consistently with such a character.
14. Clause 6, “I treat all school staff with respect,” was understood by some submitters as imposing different standards for staff and students. To reflect that 97% of survey submitters agreed with the inclusion of clause 6, we have added students and members of the school community (along with staff and school volunteers) to clarify that courtesy and respect should be given to everyone.
15. Clause 13, “I am politically impartial in my role as a board member,” received a support rate of 89%. Some submitters from each respondent category except students were concerned about the word “impartial” in the heading. They were clear that they disliked the implication that they were not allowed to have any political feeling or motivation, including critiquing education policy (for example, during a board meeting) even if it was in the best interests of students. We have revised this clause to be more specific about the political expectations of board members. We have replaced the heading of the clause to say, “I give effect to the policies of the government of the day.” In addition, the new clause removes the vagueness of the words “engaging with” political entities; the new clause reflects that board members cannot endorse a party or candidate in their capacity as a board member.

#### **Other Feedback**

16. A frequently suggested addition to the code of conduct was that board members should understand that their role is in governance, not management. However, understanding good governance is a capability and objective for board members, rather than a minimum standard of behaviour. To balance this fact with the call for including this in the code, good governance has been added to the clause on undertaking professional development (clause 7) to highlight its importance but not mandate that it be achieved.
17. We also received feedback calling for stronger reference to Te Tiriti o Waitangi. Submitters explained that board members often do not understand that they have a responsibility to give effect to Te Tiriti. In response to this feedback, we have included in the introductory text of the code a reference to school board objectives (as they are set out in section 127 of the Act) including giving effect to Te Tiriti. Te Tiriti is also highlighted in clause 7 as a key area of professional development.
18. Revisions made to the code of conduct based on the written feedback from some submitters have been carefully considered against the overwhelmingly positive response to the clauses as they were presented in the survey.
19. To address other concerns raised in the survey feedback, and to answer potential future questions that may arise from board members, the Ministry is developing operational guidance that will be accessible alongside the code.

## Te Tiriti o Waitangi Analysis

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20. The code of conduct will apply to all state and state-integrated school boards and therefore have an impact on ākonga Māori and their families. In addition, Kura Kaupapa Māori Te Aho Matua are state schools and their board members will be subject to the code of conduct. Te Tiriti o Waitangi responsibilities of the Crown in developing this code, and how the code itself reflects these responsibilities, has been a focus.
21. As part of our responsibility to act in good faith, the Ministry has engaged with Te Rūnanga Nui o Ngā Kura Kaupapa Māori, a focus group of Māori individuals with school governance experience [METIS 1269847 refers], as well as the Ministry's te reo and tikanga advisory board. Ngā Kura ā Iwi was also invited to be involved in the development of the draft, but due to competing priorities, was unavailable to participate.
22. We have considered the effect that this code of conduct will have on Māori and the extent to which it may damage the ability of Māori to exercise rangatiratanga, especially as governors of their kura. In September 2022, 9(2)(ba)(i) stated that "the code of conduct is not based on tikanga Māori and marginalises our kaupapa and undermines our notions of what it is to be effective governors of their kura. [...] [T]his Code of Conduct does not serve kura Kaupapa Māori, Te Aho Matua or Māori."
23. We have included in clause 4 of the code that board members of Kura Kaupapa Māori Te Aho Matua must act consistently with Te Aho Matua. This inclusion was present when the code went out for public consultation in October 2022. In addition, the code can be adapted by schools to go beyond the standards and reflect the unique culture and contexts of their school communities.
24. There was some feedback from the online survey that whānau ought to be highlighted in clause 8, which states that school board members need to engage with everyone in their school community. This amendment has been made to better reflect the importance of family connection and shared experience.
25. The focus group comprising Māori individuals expressed concerns about the use of Māori concepts in a national statutory code, particularly as these will be sitting in a framework that gives the Crown the ability to decide whether such standards have been met. We recognise that the Crown should not have discretion over whether Te Tiriti responsibilities are being met by individuals. To incorporate Te Tiriti expectations while avoiding empowering the Crown to make judgements on Te Ao Māori, we have stated our expectations that board members work with local Māori communities and be available to undertake professional development on Te Tiriti o Waitangi.
26. The focus group also cautioned against referring to tikanga and kawa in the code because there is not just one form of tikanga or kawa. For this reason, tikanga and kawa have not been included in the code.
27. In line with our objective that this code be underpinned by Te Tiriti o Waitangi expectations, many of the clauses seek to improve and maintain equity and fairness in the school community. In particular, clause 2 focusses on cultural responsiveness, clause 8 expects engagement with all members of the school community, and clause 9 mandates that the wellbeing of all students is a priority over personal beliefs of board members [Annex 2].

## Next Steps – Implementation

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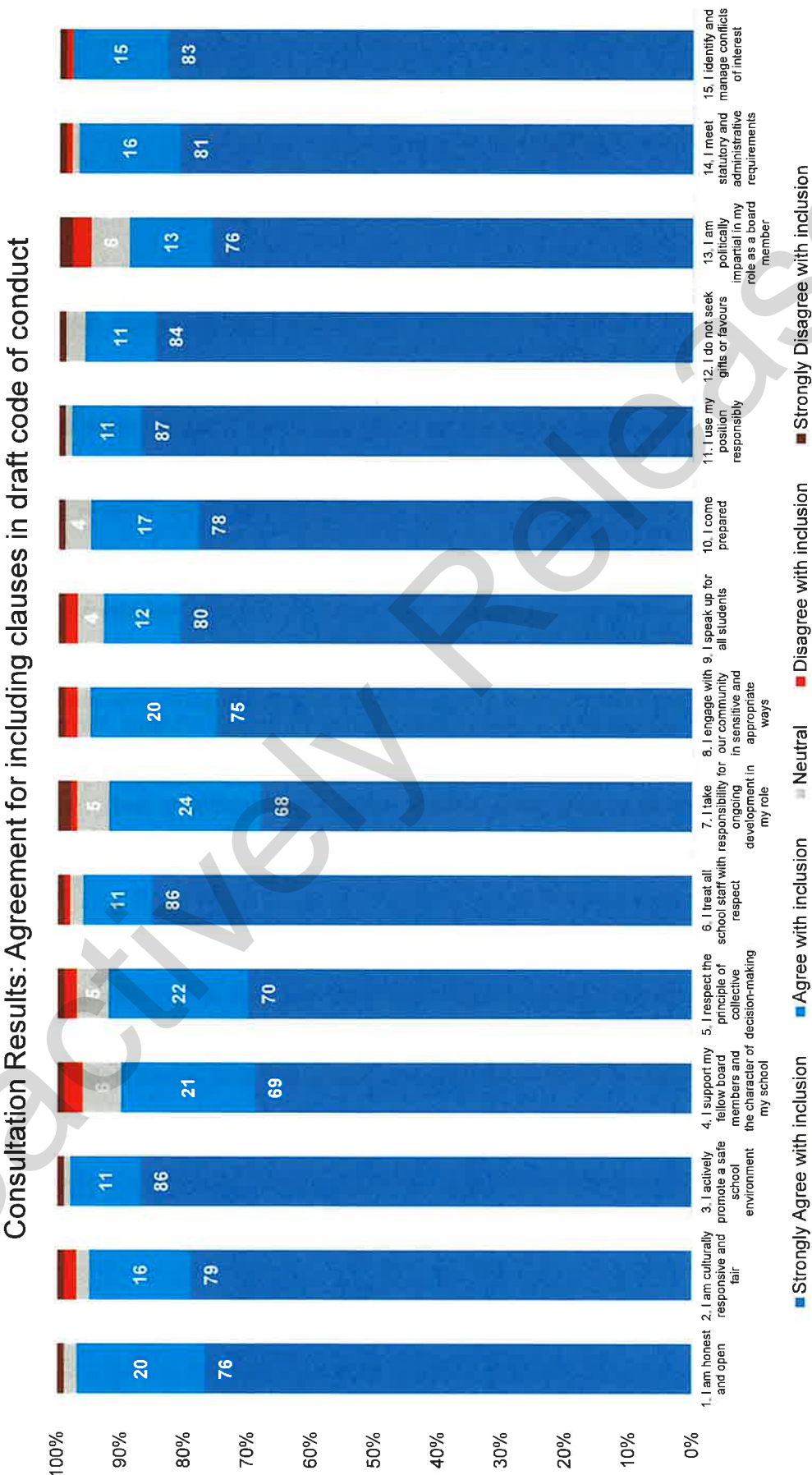
28. We recommend you agree to issue the code to all state and state-integrated school board members by notice in the *Gazette*. Once we have received your agreement, we will prepare a *Gazette* notice for you to issue.
29. The code is secondary legislation under the Legislation Act 2019, and once issued you are required to present it to the House of Representatives within 16 sitting days.
30. Once *Gazetted*, the Ministry will notify school leaders about the code of conduct via the school bulletin and upload the code to the Ministry's website. We will prepare translations in te reo Māori, English, New Zealand Sign Language, Sāmoan, Simplified Chinese, Tongan, and accessible formats.
31. The Ministry is developing operational advice to support boards to implement the code of conduct, much of which will be ready in time for when the code is *Gazetted*. The advice will include:
  - a. the process boards will follow if/when breaches of the code by a member have been identified;
  - b. advice for boards who wish to expand on the standards in the code;
  - c. that school boards are able to contact NZSTA and regional Ministry offices for further support and guidance on the code.
32. We also note that changes to school board eligibility requirements are being proposed in an upcoming bill for possible introduction to the House in March. We recommend that the timing of the announcement of those changes be considered in the context of the issuance of this code of conduct. The Ministry's Communications team will liaise with your office to provide press release material and questions and answer material as needed.

## Annexes

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- Annex 1: Graph of levels of agreement for the inclusion of each clause in the draft code of conduct
- Annex 2: Code of Conduct for State and State-Integrated School Board Members

Annex 1: Graph of levels of agreement for the inclusion of each clause in the draft code of conduct





## Annex 2: Code of Conduct for State and State-Integrated School Board Members

### Code of Conduct for State School Board Members

Issued by the Minister of Education under section 166 of the Education and Training Act 2020 to apply to members of state and state-integrated school boards.

Individual boards of schools/kura can decide to expand the minimum standards in this code to protect the special character / different character / principles of Te Aho Matua and any special characteristics of the school or its community.

#### **Acting to achieve our objectives**

The purpose of all school boards is to govern the school. As board members, we share the common objectives, as outlined in section 127 of the Education and Training Act 2020, including ensuring the school gives effect to Te Tiriti o Waitangi. These objectives are not achieved alone, but in partnership with parents/caregivers, whānau, iwi, hapū, communities, and students/ākonga.

We act and behave in a manner that demonstrates and promotes these common objectives.

Clause Heading	Clause Description
1. I act with integrity	I act with high standards of professional and personal integrity, including being honest, open, transparent, and trustworthy.
2. I am culturally responsive and fair	I do not act or advocate in a way that discriminates against, nor act in a way that unjustifiably favours, particular individuals, groups, identities or interests.
3. I actively promote a safe school environment	I speak up when I see unethical behaviour. I treat all concerns raised seriously. I encourage an open culture where all staff, communities and students feel safe speaking up.

4. **I am respectful of my fellow board members and act consistently with the designated or special character of my school**  
I follow the board's policies and procedures. I work with my fellow board members in a respectful way, even when we disagree. If I am a board member of a designated character school or State-integrated school I act consistently with the school's character. I act consistently with Te Aho Matua where the school is a Kura Kaupapa Māori Te Aho Matua.
5. **I respect the process of collective decision-making**  
I recognise that only a member authorised by the board to do so may speak on behalf of the board. I do not act independently of the board's decisions.
6. **I treat school staff, students and members of the school community with respect**  
I treat the principal, staff, students, and school volunteers, and members of the school community with courtesy and respect.
7. **I take responsibility for ongoing development in my role**  
I make myself available to undertake appropriate professional development, including a focus on Te Tiriti o Waitangi and good governance.
8. **I engage with our community in sensitive and appropriate ways**  
I work with my fellow board members to authentically engage with all people in our school community, including whānau, local Māori communities, iwi and hapū, fairly, impartially, promptly, and sensitively to help inform the decisions we make.
9. **I speak up for all students**  
I put students' wellbeing, progress and achievement first and foremost, unaffected by my personal beliefs or interests.
10. **I come prepared**  
I come to Board meetings prepared to fully participate in decision-making.

**11. I use my position responsibly**

I maintain confidentiality when I receive non-public information gained in the course of my duties and use it only for its intended purpose. I publicly represent the school in a positive manner and do not publicly disclose information that may be harmful to the school. I do not pursue my own interests at the expense of the school or community's interests.

**12. I do not seek gifts or favours**

I follow our board policy procedures in relation to any offers of gifts or hospitality. I never seek gifts, hospitality or favours for myself, members of my family or other close associates.

**13. I give effect to the policies of the government of the day**

Irrespective of my political interests, I conduct myself in a way that enables me to act effectively under current and future governments. I do not endorse or campaign for a political party or candidate in my capacity as a school board member.

**14. I meet statutory and administrative requirements**

I act in accordance with all statutory and administrative requirements relevant to the role of the school board (including as an employer) and will seek guidance and support if and where required.

**15. I identify and manage conflicts of interest**

I identify, disclose, manage and regularly review all interests. I become familiar with, and follow, all conflicts of interest requirements, including those of the board, the school, and all statutory requirements.

Hon Jan Tinetti  
**Minister of Education**

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