



Education Report: Seeking approval to publicly consult on a code of conduct for state school board members

To:	Hon Chris Hipkins, Minister of Education Hon Jan Tinetti, Associate Minister of Education		
Cc:	Hon Kelvin Davis, Associate Minister of Education (Maori Education)		
Date:	15 September 2022	Priority:	High
Security Level:	In Confidence	METIS No:	1269847
Drafter:	Lucy Hu	DDI:	463 8288
Key Contact:	Ben O'Meara	DDI:	9(2)(a) [REDACTED]
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper seeks your agreement to publicly consult on a draft code of conduct for state school board members [Annex 1] and on whether eligibility criteria to be a board member should be amended.

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 state school boards. The code will set out minimum standards of conduct that each board member is expected to meet.
2. Before issuing the code, the Minister is required to consult national bodies representing the interests of boards and may also consult anyone else the Minister thinks fit. Section 169 of the Act provides sanctions for failure to comply with the code of conduct, including enabling the Minister to remove a board member for significant or persistent breaches of the code where the Board recommends this.
3. We have worked with the New Zealand School Trustees Association (NZSTA) on development of a draft code, including using as a basis the NZSTA voluntary code for its members and the code of conduct for Crown entities. On 12 July 2021, you agreed to the NZSTA seeking feedback from its members on a draft of the code [METIS 1264337 refers].
4. Last year, work to develop the code was slowed down to avoid over-burdening schools at a time when COVID-19 was having a big impact. Code development work has now resumed.
5. Based on feedback from the NZSTA survey of its members, we have amended 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.

6. Through the code development, we engaged with Te Rūnanga Nui o Ngā Kura Kaupapa Māori and Ngā Kura ā Iwi o Aotearoa. While Ngā Kura ā Iwi did not have the capacity to contribute to the code, Te Rūnanga Nui expressed 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”. Further, they said that the code “excludes Te Rūnanga Nui as the kaitiaki of Te Aho Matua”. We have amended the draft code to require boards of Kura Kaupapa Māori to act consistently with Te Aho Matua, and we will work through their broader concerns following upcoming decisions on the Māori Medium/Kaupapa Māori education work programme.
7. We are now seeking your approval to publicly consult, on your behalf, on the attached draft code of conduct during October and November this year.
8. The Ministry will also develop implementation advice and support, with a view to enabling you to issue the new code of conduct in December 2022.
9. At the Agency meeting on 12 September 2022, you also requested work on potential changes to the eligibility criteria for school board members [METIS 1294818 refers] via the Education and Training Amendment Bill (No 3). Given there will not be time to develop and consult on policy options before Cabinet approves the issuing of drafting instructions in December, we are seeking your approval to add a question to the consultation on the code of conduct. We propose asking submitters whether eligibility criteria should be changed, and if so, how.

Recommended Actions

The Ministry of Education recommends that you:

- a. **agree** that the Ministry of Education consult on the draft code of conduct [Annex 1 refers] with the public, and actively engage NZSTA, Te Rūnanga Nui o Ngā Kura Kaupapa Māori, Ngā Kura ā Iwi o Aotearoa, and other school board representatives to provide feedback

Agree / Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

- b. **agree** that, as part of the consultation on the draft code of conduct, the Ministry should seek feedback on whether eligibility criteria to be a school board member should be amended

Agree / Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

Proactive Release Recommendation

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

Agree Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

Ben O'Meara

Ben O'Meara
Group Manager
Te Puna Kaupapahere
15/09/2022

Chris Hipkins

Hon Chris Hipkins
Minister of Education

28/9/2022

Jan Tinetti

Hon Jan Tinetti
Associate Minister of Education

16/09/2022

Background

1. As part of the Tomorrow's Schools Reforms [SWC-19-MIN-0153 refers], provisions for a mandatory national code of conduct for school board members have been included in the Education and Training Act 2020 (Sections 166 – 169). 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 include:
 - a. Section 166, which enables the Minister of Education (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.

Development of the Code

4. We agreed a set of objectives for the Code with you [METIS 1227279 and 1264337 refer] and have added to these more recently (see the last objective below), so that the following objectives have guided the development work:
 - 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.

- I. To ensure board members cannot pursue their own personal beliefs and interests to the detriment of students, the school and the community.
5. We have worked closely with NZSTA's President, Lorraine Kerr, and Chief Executive, Elise Adams, on the development of a draft code, which included co-development workshops and receiving feedback from NZSTA's Regional Board Chair group. We used the content in NZSTA's voluntary code as a starting point but also considered other resources, including the Public Service Commission's (PSC's) code of conduct for board members of statutory entities and Crown entity companies¹. NZSTA has helped ensure that the language in the code is not overly complex and that only minimum, behaviour-based standards are included, which is important both to ensure enforceability and because of the code's accompanying legal consequences.
6. Te Rūnanga Nui have advised us that they do not support the policy and provisions in the Education and Training Act relating to a code of conduct.
7. We have met with Te Rūnanga Nui in the last two weeks to let them know that the work to develop a code is progressing and to seek their input to the code. Te Rūnanga Nui have provided the following feedback:

"Our whānau refuse to be assimilated into the mainstream schooling system. . . . [A]ny code intended for use in kura kaupapa Māori needs to be developed by our whānau. Whānau do not want a Euro-centric world-view code. 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. Whānau Kura Kaupapa Māori want to govern as Māori.

The mainstream schooling system cannot establish tikanga, under a Draft Code. Tikanga Māori must be established for Māori by Māori. Many of our kura whānau and Boards will resist implementing a Code because it continues to subsume our kaupapa into a pākehā paradigm and marginalise Māori.

Our kura and whānau have a human right to be Māori and they want to and act, think and feel as Māori. Māori cannot be required to be politically neutral under any new Code. If Māori feel that they have been prejudicially affected by the crown, then they have rights to pursue under Te Tiriti o Waitangi.

The Draft Code marginalises the mana of whānau KKM to participate at a governance level and excludes Te Rūnanga Nui as the kaitiaki of Te Aho Matua.

The wider system reforms and this Code of Conduct does not serve kura kaupapa Māori, Te Aho Matua or Māori."

8. In response to a suggestion Te Rūnanga Nui made in this meeting, we have amended the draft code to require boards of Kura Kaupapa Māori to act consistently with Te Aho Matua. We also acknowledge the role of Te Rūnanga Nui in governing Kura Kaupapa Māori with agency and authority. We will consider Te Rūnanga Nui's broader concerns regarding the code following upcoming Cabinet decisions on the Māori Medium/Kaupapa Māori education work programme. This will enable us to align any changes to code of conduct provisions for kura with decisions on the Māori Medium work programme.

¹ This code is titled as being for Crown entity board members, but specifically excludes some types of Crown entities including school boards. A copy of this code can be found at the following link: [Code-of-Conduct-For-Crown-Entity-Board-Members.pdf \(publicservice.govt.nz\)](https://publicservice.govt.nz/code-of-conduct-for-crown-entity-board-members.pdf) .

9. We have also invited Ngā Kura ā Iwi to be involved in the development of the draft code, but they have had limited ability to do so due to competing priorities. We have recently requested their feedback on the current version of the draft code and are awaiting a response.
10. We also consulted with a focus group of Māori individuals who have experience in and understanding of school governance. They spoke of the importance for Māori of being guided by tikanga and kawa, and the importance for those operating in Kura Kaupapa Māori settings of being guided by Te Aho Matua. However, they 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. They also cautioned against referring to tikanga and kawa in the code because there is not just one form of tikanga or kawa.
11. A variety of resources have also informed the code content, in particular the PSC's code for Crown entity board members. We have used Crown entity board requirements that were not in NZSTA's voluntary code, such as those about reporting unethical behaviour, and about political impartiality. There remain some differences between the PSC's Crown entity code and the draft code for school board members, in recognition of the different and unique context of the school board.

NZSTA Member Feedback Incorporated into the Draft Code

12. Feedback from NZSTA members has been generally positive and supportive of the code, with particularly high ratings on the code's ability to accurately reflect the board's role in the school and relationships within the school. Our changes to the draft code following the NZSTA member survey primarily address the following issues:
 - a. The enforceability of the code ranked lowest in the survey. We have clarified the code to focus on behaviours that can be objectively assessed, rather than attitudes or commitments. We have also shortened the code to reflect minimum, enforceable standards of behaviour.
 - b. Members also gave relatively lower scores to the code's ability to reflect board obligations under Te Tiriti o Waitangi. We balanced this feedback with the concern that putting Māori concepts in a national statutory code gives the Crown the ability to decide whether such standards have been met. In order to incorporate Te Tiriti expectations while avoiding empowering the Crown to make judgements on Te Ao Māori, our changes focus on increasing the clarity of expectations to work with local Māori communities and to undertake professional development on Te Tiriti o Waitangi.
 - c. To address some feedback on clarifying that expectations in the code are at an individual board member level and not a collective level, we have changed the 'we' to 'I' statements throughout the code.
 - d. Further to the feedback from NZSTA members, we have made changes to the code to encompass a new objective of ensuring board members do not pursue their personal beliefs and interests to the detriment of students. We have added clauses on an expectation to put students' wellbeing, progress and achievement first, unaffected by a board member's personal beliefs or interests, and to not pursue any individual interests at the expense of the school.

Eligibility Criteria

13. In response to public concern that some candidates standing in school board elections in September 2022 may be inappropriate as members, we provided you with advice on 2 September [METIS 1294818 refers] regarding current eligibility criteria and options for strengthening the electoral process. At the Agency meeting on 12 September, you indicated you are keen to consider statutory eligibility changes to reflect the specific needs and expectations of school board members as distinct from those set by the Public Service Commission for other crown entity boards.
14. Policy decisions and approval to issue drafting instructions for the Education and Training Amendment Bill (No 3) are required at Cabinet in December this year. Given the short timeframes, we do not anticipate being able to undertake a full public consultation on policy changes to eligibility criteria before December. However, we recommend asking for public input on whether board eligibility criteria should be changed as part of the consultation process on the code of conduct. The Education and Workforce Committee will also be able to invite submissions on any changes to eligibility to be on a school board via their consideration of the Bill.
15. We propose to ask submitters on the code of conduct if they consider that changes to eligibility criteria for board members are required, and if so, what changes could be considered.
16. We will then provide advice to you on changing the eligibility criteria to be a school board member by late November.

Next Steps – Public Consultation and Implementation

17. The draft code of conduct is attached as Annex 1.
18. We are proposing to consult with the public on this draft code of conduct through a survey on the Ministry's website seeking feedback and submissions on the draft. This will be accompanied by web content summarising the purpose, mechanisms and content of the code.
19. We will actively seek feedback from NZSTA members, Te Rūnanga Nui, and Ngā Kura ā Iwi. We will distribute the survey through the School Leaders Bulletin | He Pitopito Kōrero, with the Ministry's regional offices assisting with communications about the consultation.
20. The Ministry will develop operational advice to support boards to implement the code of conduct, including assisting boards with breaches of the code and advice for boards who wish to expand the minimum standards in the code.
21. We propose to solicit in the consultation, in addition to feedback on the draft code of conduct, feedback on whether the eligibility criteria to be a board member should be amended and, if so, how.

22. If you agree to public consultation, we propose the following timeline:

17 Oct (<i>Start of Term 4</i>) – 13 Nov	(Subject to your approval) The Ministry undergoes targeted and public consultation on the draft code over 4 weeks.
Nov 2022:	<p>The Ministry provides you with a proposed final code that considers public feedback, and seeks agreement to you issuing the code.</p> <p>The Ministry develops implementation supports for the code.</p> <p>(Late November) The Ministry provides advice on changing the eligibility criteria to be a school board member.</p>
Dec 2022:	You issue a code to all state and state integrated school board members by notice in the <i>Gazette</i> .

Annexes

Annex 1: Draft Code of Conduct for State School Board Members

Code of Conduct for State School Board Members

Issued under section 166 of the Education and Training Act 2020.

1. I am honest and open	I act with high standards of professional and personal integrity.
2. I am culturally responsive and fair	I do not act or advocate in a way that unjustifiably favours, or discriminates against, particular individuals, groups, identities and interests.
3. I actively promote a safe school environment	I speak up when I see unethical behaviour in the school. I treat all concerns raised seriously. I encourage an open culture where all staff, communities and students feel safe speaking up.
4. I support my fellow board members and the character of my school	I follow the board's policies and procedures. I work with my fellow board members in a respectful way. 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.
5. I respect the principle 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 all school staff with respect	I treat the principal, staff employed by the board, and volunteers, 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.
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 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 am politically impartial in my role as a board member	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 engage with 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 Chris Hipkins
Minister of Education

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