

Cabinet Paper material

Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education, and Hon Jan Tinetti, Associate Minister of Education
Name of package	Regulating for the Promotion of Healthy Food and Nutrition in Schools and Reporting on Student Performance: Policy Decisions
Date considered	29 August 2022
Date of release	21 September 2022

These documents have been proactively released:

Cabinet Minute: CAB-21-MIN-0336

Date considered: 29 August 2022

Author: Cabinet Office

Cabinet Minute: SWC-22-MIN-0151

Date considered: 24 August 2022

Author: Cabinet Office

Cabinet Paper: Regulating for the Promotion of Healthy Food and Nutrition in Schools and Reporting on Student Performance: Policy Decisions

Date considered: 29 August 2022

Author: Hon Chris Hipkins, Minister of Education, and Hon Jan Tinetti, Associate Minister of Education

Briefing Note: Regulations for promotion of healthy food and nutrition in schools and reporting on student performance – Talking points for Social Wellbeing Committee

Date: 19 August 2022

Author: Ministry of Education

Material redacted

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Social Wellbeing Committee: Period Ended 26 August 2022

On 29 August 2022, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 26 August 2022:

Out of scope

SWC-22-MIN-0151 **Regulating for the Promotion of Healthy Food and Nutrition in Schools and Reporting on Student Performance: Policy Decisions** CONFIRMED
Portfolios: Education / Associate Education
(School Operations)

Out of scope

Rachel Hayward
Acting Secretary of the Cabinet



Cabinet Social Wellbeing Committee

Minute of Decision

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Regulating for the Promotion of Healthy Food and Nutrition in Schools and Reporting on Student Performance: Policy Decisions

Portfolio Education / Associate Education (School Operations)

On 24 August 2022, the Cabinet Social Wellbeing Committee:

Promotion of healthy food and nutrition

- 1 **noted** that the current National Administration Guideline (NAG) 5(b), which requires schools to promote healthy food and nutrition will cease to have effect on 1 January 2023;
- 2 **agreed** to the creation of new regulations under section 638 of the Education and Training Act 2020 that place a duty on school boards to promote healthy food and nutrition;
- 3 **noted** that the Ministry of Education has been directed to gather evidence and report back to the Minister of Education and Associate Minister of Education (School Operations) by December 2023 about how to implement a duty to provide only healthy drinks in secondary schools as well as primary schools;
- 4 **noted** that the Ministry of Education has also been directed to investigate a potential joint work programme with the Ministry of Health on the provision of healthy food and nutrition in schooling and kura, and to report back to the Minister of Education, Associate Minister of Education (School Operations), and the Minister of Health by December 2023;

Student reporting requirements

- 5 **noted** that the current NAG 2(c), which requires schools to report on the progress and achievement of individual students, will expire on 1 January 2023;
- 6 **noted** that the above creates a risk that some schools and kura may decrease the timing, form and/or content of their reporting to parents and whānau when NAG 2(c) expires;
- 7 **agreed** to the creation of new regulations under section 639 of the Education and Training Act 2020 that replicate the current requirements in NAG 2(c);

Drafting of regulations

- 8 **invited** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to create new regulations for: the promotion of healthy food and nutrition and student reporting requirements to give effect to the above decisions;

- 9 **authorised** the Minister of Education to make minor and technical decisions during the drafting of the regulations that are consistent with the intent of the above proposal.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Damien O'Connor
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Officials Committee for SWC

Proactively Released

In Confidence

Offices of the Minister of Education and the Associate Minister of Education (School Operations)

Cabinet Social Wellbeing Committee

Policy approvals: Regulating for the promotion of healthy food and nutrition in schools and reporting on student performance

Proposal

- 1 We seek Cabinet agreement to two sets of regulations that replicate current requirements set out in the National Administrative Guidelines, which will expire on 1 January 2023, to:
 - 1.1 place a duty on school boards to promote healthy food and nutrition.
 - 1.2 require reporting to students and their parents about students' individual progress and achievement.

Relation to Government priorities

- 2 The proposal to replicate the current requirements to promote healthy food and nutrition will support the achievement of the Government's Child Youth and Wellbeing Strategy by ensuring children and young people continue to receive positive education on healthy food and nutrition.
- 3 The proposal to replicate the current requirements for reporting individual student progress and achievement supports the Government's Education Work Programme objective of ensuring learners and their whānau are at the centre of education.

Background

The National Administrative Guidelines (NAGs) expire on 1 January 2023

- 4 From 1 January 2023, as a part of moving to a new planning and reporting system for school boards, the National Administration Guidelines (NAGs) for school boards will cease. These include:
 - 4.1 NAG 5(b), which requires schools to promote healthy food and nutrition, and has been in place since 2009.
 - 4.2 NAG 2(c), which requires schools, on the basis of good quality assessment and/or aromatawai information, to report to students and their parents and whānau on the progress and achievement of individual students:
 - 4.2.1 in plain language, in writing, and at least twice a year; and
 - 4.2.2 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 matatini and pāngarau,

Policy proposal for healthy food and nutrition regulations

- 5 Through the Child and Youth Wellbeing Strategy, the Government has committed to ensuring that children have the best possible health as a foundation for wellbeing.

Healthy food and drink are good for a child's general health, oral health, and school behaviour. Regulation of school-level provision of healthy food and drink, with varying degrees of prescription and prohibition, is common in other OECD countries.

- 6 The current National Administration Guidelines (NAGs), which will cease on 1 January 2023, include a duty on school boards to promote healthy food and nutrition (NAG 5(b)). We are now seeking approval to create new Regulations under section 638 of the Education and Training Act 2020 to replace NAG 5(b).
- 7 The public consultation that Cabinet agreed to in February 2022 [CBC-22-SUB-0009 refers] looked at taking the opportunity to strengthen the- existing requirement by adding a duty to only provide healthy drinks for students in year 1-8.
- 8 Public consultation ran from April to June 2022. While there was significant public support for adding this new duty, the majority of submitters wanted the Government to apply the duty to primary and secondary schools. We considered this further but have decided against this approach because fewer secondary schools have water-only policies, and there was limited feedback from these schools on the impact of this duty.
- 9 We propose that the Ministry of Education undertakes further work in 2023 to assess the impact of implementing this for secondary schools, with the intention that the duty will be implemented in primary and secondary schools at the same time.
- 10 Alongside that, we have considered submitters' feedback about the need for the government to think more broadly about the provision of healthy food in schools and kura. We have directed our officials to investigate a potential joint work programme with the Ministry of Health, with advice provided to the Minister of Health and us by the end of 2023.

Policy approval for regulations specifying student reporting requirements

- 11 Current requirements for reporting to parents are specified in the NAG 2(c). When the NAGs expire on 1 January 2023, reporting requirements in section 165 of the Act with an associated regulation-making power come into force.
- 12 Without new regulations to replicate current NAG requirements, there is a risk that some schools and kura may decrease the timing, form and / or content of their reporting to parents and whānau, and that parents' and whānau expectations are not met.
- 13 We are seeking approval to create new regulations under section 639 of the Act that replicates the current requirements of NAG 2(c). The regulations would require school boards with the principal and teaching staff to, on the basis of good quality assessment and/or aromatawai information¹, report to students and their parents or caregivers and whānau on the progress and achievement of individual students:
 - 13.1 in plain language, in writing, and at least twice a year; and
 - 13.2 across the National Curriculum, as expressed in The New Zealand Curriculum or Te Marautanga o Aotearoa, including in mathematics and literacy, and/or te reo matatini and pāngarau;
- 14 Replicating the current reporting requirements means that schools would continue reporting to parents and whānau as they do currently. This provides certainty and minimises change for schools in the uncertain pandemic environment.

¹ 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.

Implementation

- 15 If Cabinet agrees, we have set out the plan below for finalising these regulations.

Milestone/Activity	Timeframe
Cabinet approval of final policy settings for new regulations for promotion of healthy food and nutrition, and regulations for student reporting.	August 2022
Cabinet approval of regulations	November 2023
Regulations come into effect	1 January 2023

Financial Implications

- 16 There are no funding implications from the proposals in this paper.

Legislative Implications

- 17 The regulatory proposals in this paper require the creation of new regulations under sections 638 and 639 of the Education and Training Act. I seek approval to issue drafting instructions to Parliamentary Council Office to give effect to these decisions.

Population Implications

- 18 Requirements for promoting healthy nutrition and school reporting impact all population groups with school-aged children. However, as the proposals in this paper do not alter existing requirements, there is no change to how population groups are currently affected.

Treaty of Waitangi implications

- 19 The Treaty places positive obligations on the Crown to act reasonably and with good faith towards Māori, and to actively protect iwi/Māori rights and interests. Officials have assessed the proposals in this paper against the three articles of the Treaty and its principles.
- 19.1 *Kāwanatanga/government* – the proposal to transfer NAG requirements into regulations will ensure that the existing kāwanatanga obligations continue to be met.
- 19.2 *Rangatiratanga/chieftainship* – Māori were consulted through the public consultation on healthy drinks. This provided an opportunity for iwi/Māori to shape the final policy settings. The proposal to replicate current NAG 2(c) requirements in new regulations responds to what we heard through the Education Conversation | Kōrero Mātauranga that whānau do not always feel they have the information needed about how their children are doing.
- 19.3 *Oritetanga/equity* – the proposal to introduce a new duty on all schools to only provide healthy drinks was intended to contribute to redressing the existing health inequalities between Māori and non-Māori children, and to actively protect Māori from further harm caused by consumption of sugary beverages. Submissions from Māori organisations highlighted that the options presented in public consultation risk perpetuating breaches of Te Tiriti, by allowing schools to feed tamariki Māori foods that contribute to health problems and limit the ability to achieve mauri ora and pae ora. While the proposed regulation will cover only a duty on school boards to promote healthy food and nutrition, it will

set a minimum standard that will be supported by other initiatives, such as Ka Ora, Ka Ako Healthy School Lunches and Healthy Active Learning. Under section 217 of the Education and Training Act, school boards also have a responsibility to give effect to Te Tiriti o Waitangi, which may include additional school policies that promote Māori education (and health) outcomes. Maintaining the status quo of school reporting requirements ensures that existing standards for student reporting continue.

Human Rights

- 20 All the proposals appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination as to the consistency of these proposals with the New Zealand Bill of Rights Act will be made when the new regulations have been drafted.

Impact Analysis

Regulatory Impact Statement

- 21 The proposal to create regulations that replicate the current National Administration Guideline requirements does not need a Regulatory Impact Statement, on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 22 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Consultation

- 23 The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Puni Kokiri, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Social Development, Office for Disability Issues, Ministry of Health, Ministry of Justice, Ministry for Ethnic Communities, Oranga Tamariki, Sport New Zealand, Education Review Office, Police, Privacy Commission, Teaching Council and the New Zealand Qualifications Authority have been consulted.

Communications

- 24 We propose to announce these decisions alongside the release of consultation results once Cabinet decisions have been made.

Proactive Release

- 25 We intend to proactively release this Cabinet paper after Cabinet decisions are made and subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

- 26 The Minister of Education and Associate Minister of Education (School Operations) recommends that the Committee:

Promotion of healthy food and nutrition

- 1 **note** that the current National Administration Guideline 5(b), which requires schools to promote healthy food and nutrition will cease to have effect on 1 January 2023;

- 2 **agree** to the creation of new regulations under section 638 of the Education and Training Act 2020 that place a duty on school boards to promote healthy food and nutrition;
- 3 **note** we have directed the Ministry of Education to gather evidence and report back to us, by the end of 2023, about how to implement a duty to provide only healthy drinks in secondary schools as well as primary schools;
- 4 **note** that we have directed the Ministry of Education to investigate a potential joint work programme with the Ministry of Health on the provision of healthy food and nutrition in schooling and kura, and to report back to us and the Minister of Health by the end of 2023;

Student reporting requirements

- 5 **note** that the current National Administration Guideline (NAG) 2c, which requires schools to report on the progress and achievement of individual students, will expire on 1 January 2023;
- 6 **note** that this creates a risk that some schools and kura may decrease the timing, form and / or content of their reporting to parents and whānau when NAG 2(c) expires;
- 7 **agree** to the creation of new regulations under section 639 of the Education and Training Act 2020 that replicate the current requirements in National Administration Guideline 2c;

Drafting of regulations

- 8 **invite** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to create new regulations for: the promotion of healthy food and nutrition and student reporting requirements to give effect to the above proposals;
- 9 **authorise** the Minister of Education to make minor and technical decisions during the drafting of the regulations that are consistent with the intent of the above proposal.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Hon Jan Tinetti

Associate Minister of Education (School Operations)