



Cabinet


Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 18 November 2022

On 21 November 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 18 November 2022:

Out of scope




LEG-22-MIN-0196


**Education (When State Schools Must Be Open)
Regulations 2022**
Portfolio: Education

CONFIRMED

Out of scope



Out of scope



Rachel Hayward
Secretary of the Cabinet

In Confidence

Office of the Minister of Education

Chair, Cabinet Legislation Committee

Education (When State Schools Must Be Open) Regulations 2022

Proposal

- 1 I seek Cabinet policy approval for Education (When State Schools Must Be Open) Regulations 2022 (the Regulations) to be in place for 2023. The Regulations will temporarily replace the soon to be repealed Schedule 21 of the Education and Training Act 2020 ('the Act'), while changes are made to the Act to allow for regulations that empower the Minister of Education (the Minister) to specify requirements for when schools must open or close in line with Schedule 21.
- 2 I also seek authorisation to submit to the Executive Council the Regulations, which give effect to the policy proposals for these regulations.

Executive summary

- 3 On 4 July 2021, Cabinet agreed to a "lift and shift" of Schedule 21 (When State schools must be open) into regulations made under section 638(2) of the Act [CAB-22_MIN-0251]. The Schedule will be automatically repealed on 1 January 2023.
- 4 Parliamentary Counsel and Crown Law have since advised that the regulation-making power under section 638(2)(e) of the Act does not allow a sub-delegation of power from the Governor-General to the Minister to enable them to set opening hours. This means that while some parts of Schedule 21 can be replicated into new regulations, the parts that empower the Minister to specify terms, days and circumstances for exceptions cannot.
- 5 I intend to seek an amendment to the Act through the Education and Miscellaneous Matters Amendment Bill in 2023, to broaden the regulation-making power so that the Minister can specify when state schools must open or close. This amendment would maintain the flexibility provided under Schedule 21. However, the Bill may not be passed until mid-2023, and regulations under the new provision could not be in place until 2024.
- 6 To ensure minimum requirements for State school opening hours are maintained throughout 2023 while legislative change is sought, I am proposing to create regulations that specify when schools must open or close and contain provisions consistent with the statutory requirements and Minister's notices already made under Schedule 21.
- 7 The Education (When State Schools Must Be Open) Regulations 2022 contain revisions of Schedule 21, and do not alter the current minimum requirements on State schools opening hours. Parliamentary Counsel Office agreed to draft these Regulations in advance of Cabinet policy approval because of the timeframes involved to have them in force by 1 January 2023.

Background

Problem definition

- 8 The Act requires schools to be open in accordance with Schedule 21 (when State schools must be open) or regulations made under s638(2). Schedule 21 will be automatically repealed on 1 January 2023 as it was intended that requirements for school opening hours would be replaced by regulations.
- 9 On 4 July 2022, Cabinet agreed to transfer Schedule 21 provisions into regulations [CAB-22_MIN-0251]. Replicating Schedule 21 would continue the current framework that authorises the Minister to make decisions about when schools must be open or closed.
- 10 During drafting of these regulations, Parliamentary Counsel Office and Crown Law advised of a technical issue in section 638(2)(e) that prevents the Governor General subdelegating powers to the Minister. Section 638(2) allows the Governor-General to make regulations that *“provide for when schools must be open and closed for instruction”*. While the drafting of this section intended to allow the Minister to specify opening hours as they currently do, the power is not broad enough to do so. This means that while some parts of Schedule 21 can be replicated into new regulations, the parts that empower the Minister to specify terms, minimum half days and circumstances for exceptions cannot.
- 11 Regulations made under s638(e) must, instead, specify dates and exceptional circumstances, but this specificity would remove the flexibility of the current framework. It is important to retain flexibility for the Minister to set term dates and minimum days schools must be open to easily account for calendar fluctuations (e.g., around Easter) and respond to situations that require half-day and terms amendments, as they arise, without needing to change the Act or make new regulations.

Proposed long-term and interim solutions

- 12 To remedy this issue, I am proposing to:
 - 12.1 Amend the Act to widen the regulation making power under s638(2)(e) to allow a sub-delegation of powers to the Minister. I intend to seek this change through the Education and Miscellaneous Matters Amendment Bill (Omnibus Bill) and will seek policy approval for this in December 2022 as part of Tranche 3 proposals for the Omnibus Bill. Once the Bill is passed, regulations that replicate the provisions of Schedule 21 can be made by 1 January 2024.
 - 12.2 Create regulations as an interim measure to ensure schools have certainty about the school terms and minimum half days for the 2023 and 2024 school years while changes to the Act are being progressed.

Proposed content of regulations

- 13 I propose the regulations will include the following provisions that are consistent with the statutory requirements and Minister’s notices already made under Schedule 21.
 - 13.1 minimum half-days / length of the school year and terms that schools must observe;

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- 13.2 when schools must be closed;
 - 13.3 exceptions in particular cases (fewer half-days and closures for bereavement); and
 - 13.4 multiple timetable arrangements.
- 14 Some of the existing requirements in Schedule 21 do not involve a sub-delegation of power to the Minister, so I propose those clauses are replicated into the regulations as intended. Appendix 1 sets out the details of these clauses.
- 15 I have set out below, in paragraphs 16 to 24, the clauses of Schedule 21 that currently involve a power of the Minister, and my proposed approach to the regulations. Appendix 1 also maps these clauses against the proposals.

Minimum half-days / length of school year and terms that schools must observe

- 16 Clauses 1 and 2 of Schedule 21 allow the Minister to specify the number of half-days on which schools must be open for instruction in a year, and the term dates. The Minister must specify these by at least 1 July before the next school year.
- 17 Under my existing powers, I have already published the minimum half days and terms that a school must be open for 2023 and 2024, so I propose that the regulations set these same dates and minimum half-days for 2023 and 2024, set out in Appendix 2 of this paper.
- 18 While it is intended that the regulations will only be in place for 2023, including the 2024 dates will help manage the transition between the interim regulations and the substantive regulations, and provide the sector with certainty around term dates. This is because it will not be possible for the Minister to set 2024 term dates under the substantive regulations before 1 July 2023, which is the minimum notice requirement for schools.

When schools may close - additional circumstances

- 19 Section 659 of the Act allows boards to close their school because of an epidemic, a flood, a fire, or any other emergency. Outside of emergencies, under clause 3(5), the Minister may also specify other circumstances in which a school may close. I propose the regulations allow schools to close to observe a funeral or tangi of a current student or staff member, provided the school still meets its half-day requirements.

Fewer half days

- 20 Clause 4(1) allows the Minister to authorise boards to open for fewer half-days than those prescribed. This power is additional to that in section 659 of the Act, which allows the Secretary for Education to reduce the minimum half days a school needs to be open to account for a closure due to epidemic, flood, fire, or other emergency. As an example, schools recently had to close in accordance with clause 3(1) for Queen Elizabeth II Memorial Day. I used this power to allow schools to be open for two fewer half days this year to take account of the compulsory closure imposed by the Memorial Day.

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- 21 I propose that the regulations set the following circumstances under which schools may be open for fewer half days than prescribed. These are based on common circumstances previously authorised under clause 4(1) and should be retained to maintain the status quo in 2023:
- 21.1 construction at a school has taken longer than expected and it can't stay open any longer because it would already be open until 20 December (the latest date that a school can close), and this information has already been communicated to parents and caregivers;
 - 21.2 a school has buildings that are identified as uninhabitable on short notice;
 - 21.3 to accommodate Teacher Only days allotted for 2023 and 2024; and
 - 21.4 to accommodate any additional public holiday introduced in 2023 or 2024.¹

Multiple timetable arrangements

- 22 Clause 5 allows the Minister to authorise a board to run a multiple timetable arrangement, which enables more than one timetable to be run on the same day, consecutively or concurrently. Multiple timetables were originally instituted following the Christchurch earthquakes and were used to stagger student attendance and allow multiple schools to operate using one site.
- 23 While multiple timetables are rare, I propose that the regulations replicate the criteria in clause 5, and provide that a board can run multiple timetable arrangements for a specified period at its school to accommodate the education of students from another school which does not have available facilities for those students, if:
- 23.1 the board has adequately consulted parents, staff, and the local community about the proposed multiple timetable arrangement;
 - 23.2 the proposed multiple timetable arrangement is appropriate in the circumstances; and
 - 23.3 the board has taken all reasonable steps to notify every affected student and parent of the student in writing of:
 - 23.3.1 a multiple timetable arrangement; and
 - 23.3.2 the time-period for each day during which the affected student's timetable runs.

Additional provisions ruled out

- 24 I considered three additional provisions to include in the regulations but on balance have ruled these out.
- 24.1 *Additional days that schools must be closed* – I have not specified such days before 1 July this year as required under Schedule 21, and there are

¹ For example, any unexpected additional public holiday, such as the Queen Elizabeth Memorial Day

no clear reasons why schools must be closed on other days additional to the weekends and public holidays.

24.2 *Opening on a Saturday or Sunday* – clause 3(2) currently allows the Minister to specify these circumstances. Historically, the Minister has approved individual schools to open on a weekend for a distinct purpose, following a written request, or at the time of State integration. Schools already approved to operate on a weekend on an ongoing basis can continue to do so in 2023.

24.3 *Alternative terms* – under clause 4(2) the Minister may authorise boards to open and close according to terms and holidays that differ from those prescribed.² At present, three schools are authorised to operate alternative terms and can continue to do so in 2023, including two Māori medium kura operating terms that align with their Maramataka. I am not proposing to authorise any additional schools or kura to operate alternative terms for 2023 because it is operationally not feasible in the short-term for the Ministry of Education's payroll capacity, with manual workarounds for alternative calendars required.

24.3.1 I am aware some Māori medium kura are in the process of consulting their communities on alternative term dates and may be affected. Not allowing alternative term dates could risk the Crown's ability to honour its obligations under te Tiriti o Waitangi/the Treaty of Waitangi, as the Ministry would not be able to support kura to operate in a way that meets the needs of their whānau and communities. However, this risk is the same under the current settings. Once the Act is amended, substantive regulations will return the alternative term approval process from 2024. During 2023, the Ministry of Education will undertake further work on the approach to facilitating alternative terms from 2024 onwards and continue to support kura wanting to implement alternative terms from 2024.

The Education (When State Schools Must Be Open) Regulations 2022

25 The Regulations (attached in Annex 3) give effect to the above proposals. Parliamentary Counsel Office have drafted these Regulations in advance of policy approval due to the timeframes involved.

Financial Implications

26 There are no financial implications for the Crown from this paper.

Legislative Implications

27 The Regulations are made under section 638(2)(e) of the Act. I intend to submit a policy proposal to amend this section through the Omnibus Bill, to allow for regulations that empower the Minister to make decisions about when schools must be open or closed.

² The power to authorise under clause 4(2) has been delegated from the Minister to the Secretary of Education who has sub-delegated to regional managers. This is the only clause that the Minister is allowed to delegate under Schedule 21.

- 28 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.

Impact Analysis

Regulatory Impact Statement

- 29 The Treasury's Regulatory Impact Analysis team has determined that the proposal to have the Regulations in place when Schedule 21 of the Act is automatically repealed on 1 January 2023, is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 30 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.

Population Implications

- 31 Requirements for State school opening hours can have wide-ranging impacts on all population groups with school-aged children, those employed in the schooling sector, and businesses and organisations that have a relationship with schooling (e.g., care services, sports clubs, food catering services). As the Regulations will not alter existing minimum requirements, there is no change to how relevant groups are affected.

Timing and 28-day rule

- 32 I propose that the Regulations come into force on 1 January 2023 to align with when Schedule 21: When State schools must be open is automatically repealed.
- 33 Subject to Cabinet's approval, I recommend that the Regulations be submitted to the Executive Council on 21 November 2022.

Compliance

- 34 The Regulations comply with:
- 34.1 the principles of the te Tiriti o Waitangi/the Treaty of Waitangi;
 - 34.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 34.3 the principles and guidelines set out in the Privacy Act 2020;
 - 34.4 relevant international standards and obligations; and
 - 34.5 the Legislation Guidelines.

Regulations Review Committee

- 35 There are no grounds identified under Standing Order 327 where the Regulations Review Committee could draw these regulations to the special attention of the House.

Certification by Parliamentary Counsel

- 36 The Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Communications

- 37 Once the Regulations are made, the Ministry of Education will advise schools via the School Bulletin – an online publication sent to all school leaders and published on the Ministry of Education Website.

Consultation

- 38 The following agencies were consulted: The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Social Development, Office for Disability Issues – Whaikaha, Ministry of Disabled People, Ministry of Justice, Oranga Tamariki, Ministry for Ethnic Communities, Education Review Office, and the New Zealand Qualifications Authority. Te Puni Kokiri has been informed of this paper.

Proactive Release

- 39 I intend to release the paper proactively following submission to the Executive Council. Proactive release will be subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

- 40 The Minister of Education recommends that the Committee:
- 1 **note** that Schedule 21 of the Education and Training Act 2020 will be repealed on 1 January 2023;
 - 2 **note** that on 4 July 2022, Cabinet agreed to transfer existing requirements in Schedule 21 into new regulations for when State schools must be open [CAB-22_MIN-0251];
 - 3 **note** that Parliamentary Counsel and Crown Law have advised that the regulation-making power under section 638(2)(e) of the Act does not allow a sub-delegation of power from the Governor-General to the Minister of Education, and therefore parts of Schedule 21 that empower the Minister to specify terms, minimum half days and circumstances for exceptions cannot be replicated in regulations;
 - 4 **rescind** Cabinet's decision of 4 July 2022 [CAB-22_MIN-0251] because it is not possible to replicate the parts of Schedule 21 that involve a power of the Minister in regulations made under the Act's current provision;

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- 5 **agree**, as a short-term solution to the issue in recommendation 3 above, to create Regulations for when State schools must open in 2023 and 2024, consistent with the requirements and Minister's notices issued under Schedule 21, to ensure opening hours requirements are maintained while legislative change is sought;
- 6 **agree** that the Regulations will:
 - 6.1 replicate the existing Schedule 21 clauses that do not involve sub-delegation of power to the Minister of Education (listed in Appendix 1);
 - 6.2 specify minimum half-days/length of the school year and terms that schools must observe in 2023 and 2024 according to those already agreed and published by the Minister of Education under Schedule 21;
 - 6.3 specify that schools may close to observe a funeral or tangi of a current student or staff member, or to otherwise deal with a traumatic incident;
 - 6.4 specify circumstances for when schools may be allowed to open for fewer half days:
 - 6.4.1 construction at a school has taken longer than expected and it can't stay open any longer because it is already open until 20 December (the latest date that a school can close);
 - 6.4.2 a school has buildings that are identified as uninhabitable on short notice;
 - 6.4.3 to accommodate Teacher Only days allotted for 2023 and 2024;
 - 6.4.4 to accommodate any additional public holiday introduced in 2023 or 2024;
 - 6.5 specify that a board can run multiple timetable arrangements for a specified period at its school or schools to accommodate the education of students from another school that does not have facilities available for those students, if:
 - 6.5.1 the board has adequately consulted parents, staff, and the local community about the proposed multiple timetable arrangement;
 - 6.5.2 the proposed multiple timetable arrangement is appropriate in the circumstances;
 - 6.5.3 the board has taken all reasonable steps to notify every affected student and parent of the student in writing of a multiple timetable arrangement; and
 - 6.5.4 the time-period for each day during which the affected student's timetable runs;

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- 7 **note** that I am not intending the Regulations to provide for additional schools (that do not have prior authorisation) to adopt alternative terms in 2023 and I have directed my officials to undertake further work in 2023 on the approach to facilitating alternative terms from 2024 onwards;
- 8 **note** that the Education (When State Schools Must Be Open) Regulations 2022 will give effect to the policy proposals in recommendations 5 to 6 above;
- 9 **note** that the Education (When State Schools Must Be Open) Regulations 2022 will come into force on 1 January 2023;
- 10 **authorise** the submission to the Executive Council of the Education (When State Schools Must Be Open) Regulations 2022.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

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Appendix 1: Schedule 21 vs Content of Education (When State Schools Must Be Open) Regulations			
Clause	Sub-clause	As it appears in Schedule 21	Content of regulations
1 Length of school year	(1)	The Minister may, by notice before 1 July in any year, specify the number of half-days on which schools must be open during the next year.	Specifies the number of half days for 2023 and 2024, as already published. In 2023, secondary and composite schools must be open for a minimum of 380 half-days. Primary, intermediate, and specialist schools must be open for a minimum of 386 half-days. In 2024, secondary and composite schools must be open for a minimum of 380 half days. Primary intermediate, and specialist schools must be open for 384 half-days.
	(2)	For the purposes of subclause (1), different numbers may be fixed for schools of different classes or descriptions.	Replicated.
	(3)	Except as provided in this Act, a board must ensure that each school it administers is open for instruction on the number of half-days specified under subclause (1).	Replicated.
	(4)	If, because of a strike or lockout, a school is not open for instruction on any half-day, the school is, for the purposes of subclause (2), treated as having been open for instruction on that half-day.	Replicated.
	(5)	If the Minister fails to specify the number of half-days on which schools must be open in any year, the number specified for the previous year applies for that year.	Not required for regulations as the Minister has already specified these for 2023 and 2024.
2 Terms	(1)	The Minister may, by notice before 1 July in any year, specify (by reference to specific dates, specified days, the number of half-days determined under clause 1, or any 2 or more of those means): a. the terms that schools must observe during the next year; or b. a means for ascertaining or determining those terms.	Specifies the terms that schools must observe during 2023 and 2024 as these are already published. See Appendix 2 for a full layout of half-days and terms for 2023 and 2024.
	(2)	A board must ensure that each school it administers is open for instruction for 1 half-day that finishes at or before noon and 1 half-day that starts at or afternoon on every day during the terms specified, ascertained, or determined under subclause (1).	Replicated.

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	(3)	However, a board may vary the time at which any 1 or more half-days take place (for example, by starting a second half-day before noon) if the board— a. has adequately consulted parents, staff, the local community, and any other person who the board considers may be affected about the proposed variation and it is generally acceptable; and b. is satisfied that the adoption of the proposal would not result in the students of the school spending less time in school than other students in comparable schools and other local schools; and c. has taken all reasonable steps to notify students and parents in writing of the board's final decision on the proposed variation.	Replicated.
	(4)	A board may also vary the time at which any 1 or more half-days take place without satisfying the requirements in subclause (3)(a) if— a. the variation is made for operational reasons; and b. the variation applies for no more than 2 days; and c. the board has not made a variation under this subclause during the previous 6 weeks.	Replicated.
	(5)	A student enrolled at a State school must comply with section 36 even if the school's board varies the time of any 1 or more half-days.	Replicated.
	(6)	On any day, a school is not open for instruction at all if it is open for less than 1 half-day.	Replicated.
	(7)	To avoid doubt, if a school opens on any day for only 1 half-day, that half-day may be counted towards the number of half-days fixed by the Minister under clause 1(1).	Replicated with technical change to refer to fixed days set in regulations.
	(8)	If the Minister fails to specify terms, or a means of ascertaining or determining them, in any year, the terms specified for the previous year apply for that year.	Not required for regulations as terms are specified.
3 Holidays	(1)	A board must ensure that each school it administers is closed on— a. Saturdays, Sundays, New Year's Day, 2 January, Waitangi Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, Labour Day, Christmas Day, and Boxing Day; and b. the day observed as anniversary day in the locality in which the school is situated; and c. if 1 January falls on a Friday, the following Monday; and d. if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and e. if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.	Replicated.
	(2)	However, the Minister may, by notice, specify the circumstances in which boards may open the schools they administer or any of them on Saturdays or Sundays, and if the Minister does so, the schools may open.	N/A - Setting circumstances in the regulations would be significant shift from the status quo, and a variation of this clause is not required in the short-term.

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	(3)	The Minister may, by notice, before 1 July in any year, specify days during the next year (in addition to those specified in subclause (1)) on which boards may close the schools they administer or any of them, and, if the Minister does so, schools may be closed accordingly.	N/A – a replacement for this clause is not required, given the Minister has not specified dates for 2023 or 2024.
	(5)	The Minister may, by notice, specify the circumstances in which boards may close the schools they administer or any of them, and, if the Minister does so, subject to clause 1, the schools may be closed accordingly.	Specifies that schools may be closed during a term weekday for bereavement purposes following the death of a student or staff member, or due to a traumatic incident.
4 Exceptions in particular cases	(1)	The Minister may authorise a board to open any particular school it administers for fewer half-days in any year than required by clause 1(3) and, if the Minister does so, the school may be closed accordingly.	Specifies that schools may be open for fewer half-days in 2023 and 2024 under the following circumstances: <ul style="list-style-type: none"> Construction at a school has taken longer than expected and it can't stay open any longer because it would already need to be open until 20 December, and this information has already been communicated to parents and caregivers. A school has buildings that are identified as uninhabitable on short notice. To accommodate for Teacher Only days for 2023 and 2024. To accommodate any additional public holiday introduced in 2023 or 2024.
	(2)	The Minister may authorise a board to open and close any particular school it administers in accordance with terms and holidays (specified by the Minister) that differ from those otherwise required by this Act to be observed, and, subject to any terms and conditions specified by the Minister when giving the authority, the school may be open and closed accordingly.	No provision in regulations as it is not operationally viable.
5 Multiple timetable arrangements	(1)	The Minister may authorise a board to run a multiple timetable arrangement for a specified period at a specified school if the Minister— (a) is satisfied that the board has adequately consulted parents, staff, and the local community about the proposed multiple timetable arrangement; and (b) considers that the proposed multiple timetable arrangement is appropriate in the circumstances.	A board can run multiple timetable arrangements for a specified period at a specified school to accommodate the education of students from another school which does not have available facilities for those students, if: <ul style="list-style-type: none"> the board has adequately consulted parents, staff, and the local community about the proposed multiple timetable arrangement; the proposed multiple timetable arrangement is appropriate in the circumstances; and the board has taken all reasonable steps to notify every affected student and parent of the student in writing of: <ul style="list-style-type: none"> a multiple timetable arrangement; and the time period for each day during which the affected student's timetable runs.
	(2)	An authorisation under subclause (1) may be given unconditionally or subject to any conditions the Minister thinks fit.	
	(3)	A board must take all reasonable steps to notify every affected student and a parent of the student in writing of <ul style="list-style-type: none"> a. a multiple timetable arrangement authorised under subclause (1); and b. the time periods for each day during which the affected student's timetable runs. 	

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6 Application of provisions	(1)	The powers conferred on the Minister by clauses 1 to 5 may be exercised in respect of all schools, schools of a particular classification or description, or specified schools.	Not applicable as no ministerial powers will exist in regulations.
	(2)	Clauses 1 to 5 have effect as if specialist schools and special services were State schools.	
7 Minister to act by means of instruction	(1)	The Minister's powers under clauses 1 to 6 may be exercised only by written instruction signed by the Minister.	
	(2)	However, the Minister may delegate their powers under clause 4(2) to the Secretary and, if the Minister does so,— a. the Secretary must exercise the powers in respect of individual schools only; and b. the delegation does not limit or affect the exercise of the powers by the Minister.	

Appendix 2: Published Terms and Holidays for State and State Integrated Schools

2023 – School Terms and Holidays			
Term	Start Date	End Date	Holidays
1 (10 weeks)	Between Monday 30 January (at the earliest); and Tuesday 7 February (at the latest)	Thursday 6 April (86-96 half-days)	Public holidays: Waitangi Day Monday 6 February. School holiday: Friday 7 April – Sunday 23 May (includes Good Friday, Easter Monday, Easter Tuesday).
2 (10 weeks)	Monday 24 April	Friday 30 June (96 half-days)	Public holidays: ANZAC Day Tuesday 25 April, King's Birthday Monday 5 June. School holiday: Saturday 1 July - Sunday 16 July.
3 (10 weeks)	Monday 17 July	Friday 22 September (100 half-days)	School holiday: Saturday 23 September – Sunday 8 October.
4 (10 weeks)	Monday 9 October	No later than Wednesday 20 December (up to 104 half-days) *	Public holidays: Labour Day 23 October. School holiday: 5 or 6 weeks (from school's closing date until opening date of school the following year).

* For primary, intermediate, and special schools: or to a day in December which ensures that the school has been open for instruction for a minimum of **386 half-days** in 2023.

For secondary and composite schools: or to a day in December which ensures that the school has been open for instruction for **380 half-days** in 2023.

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2024 – School Terms and Holidays			
Term	Start Date	End Date	Holidays
1 (10 weeks)	Between Monday 29 January (at the earliest); and Wednesday 7 February (at the latest)	Friday 12 April (90-102 half-days)	Public holidays: Waitangi Day Tuesday 6 February, Good Friday 29 March, Easter Monday 1 April and school holiday Easter Tuesday 2 April. School holiday: Saturday 13 April – Sunday 28 April (includes ANZAC Day 25 April).
2 (10 weeks)	Monday 29 April	Friday 5 July (96 half-days)	Public holidays: King's Birthday Monday 3 June, Matariki Friday 28 June. School holiday: Saturday 6 July - Sunday 21 July.
3 (10 weeks)	Monday 22 July	Friday 27 September (100 half-days)	School holiday: Saturday 28 September – Sunday 13 October
4 (10 weeks)	Monday 14 October	No later than Friday 20 December (up to 98 half-days) *	Public holidays: Labour Day Monday 28 October School holiday: 5 or 6 weeks (from school's closing date until opening date of school the following year).

* For primary, intermediate, and special schools: or to a day in December which ensures that the school has been open for instruction for a minimum of **384 half-days** in 2024.

For secondary and composite schools: or to a day in December which ensures that the school has been open for instruction for **380 half-days** in 2024.

**Education (When State Schools Must Be Open)
Regulations 2022**

Order in Council

At Wellington this day of 2022

Present:
in Council

These regulations are made under section 638 of the Education and Training Act 2020 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Education (When State Schools Must Be Open) Regulations 2022.

2 Commencement

These regulations come into force on 1 January 2023.

3 Interpretation

In these regulations, unless the context otherwise requires, **Act** means the Education and Training Act 2020.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

5 Length of school year

- (1) Primary, intermediate, and specialist schools must be open for—
 - (a) 386 half-days in 2023; and
 - (b) 384 half-days in 2024.
- (2) Secondary and composite schools must be open for—
 - (a) 380 half-days in 2023; and
 - (b) 380 half-days in 2024.
- (3) Except as provided in the Act, a board must ensure that each school it administers is open for instruction on the number of half-days specified for the school.
- (4) If, because of a strike or lockout, a school is not open for instruction on any half-day, the school is to be treated as having been open for instruction on that half-day.

Compare: 2020 No 38 Schedule 21 cl 1

6 Terms

- (1) Schools must,—
 - (a) for the 2023 school year, observe the relevant term dates specified in Schedule 2;
 - (b) for the 2024 school year, observe the relevant term dates specified in Schedule 3.
- (2) A board must ensure that each school it administers is open for instruction for 1 half-day that finishes at or before noon and 1 half-day that starts at or after noon on every day during the term dates specified—

- (a) for the 2023 school year in Schedule 2;
 - (b) for the 2024 school year in Schedule 3.
- (3) However, a board may vary the time at which any 1 or more half-days take place (for example, by starting a second half-day before noon) if the board—
 - (a) has adequately consulted parents, staff, the local community, and any other person who the board considers may be affected about the proposed variation and it is generally acceptable; and
 - (b) is satisfied that the adoption of the proposal would not result in the students of the school spending less time in school than other students in comparable schools and other local schools; and
 - (c) has taken all reasonable steps to notify students and parents in writing of the board's final decision on the proposed variation.
- (4) A board may also vary the time at which any 1 or more half-days take place without satisfying the requirements in subclause (3)(a) if—
 - (a) the variation is made for operational reasons; and
 - (b) the variation applies for no more than 2 days; and
 - (c) the board has not made a variation under this subclause during the previous 6 weeks.
- (5) A student enrolled at a State school must comply with section 36 of the Act even if the school's board varies the time of any 1 or more half-days.
- (6) On any day, a school is not open for instruction at all if it is open for less than 1 half-day.
- (7) To avoid doubt, if a school opens on any day for only 1 half-day, that half-day may be counted towards the number of half-days fixed under regulation 5(1) and (2).

Compare: 2020 No 38 Schedule 21 cl 2

7 Holidays

- (1) A board must ensure that each school it administers is closed on—
 - (a) Saturdays, Sundays, New Year's Day, 2 January, Waitangi Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, Labour Day, Christmas Day, and Boxing Day; and
 - (b) the day observed as anniversary day in the locality in which the school is situated; and
 - (c) if 1 January falls on a Friday, the following Monday; and
 - (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and

- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.
- (2) If a school experiences a bereavement in respect of a student or staff member or experiences some other traumatic event, the board may, subject to regulation 5, close the school for an appropriate period of time.

Compare: 2020 No 38 Schedule 21 cl 3

8 Exceptions in particular cases

A board may open a school it administers for fewer half-days in any year than required by regulation 5(3) in the following cases:

- (a) construction at the school means the school is unable to open on some days during term and as a result the school is unable to meet its half-day requirements by 20 December in 2023 or 2024;
- (b) the school is rendered uninhabitable on short notice;
- (c) to accommodate any teacher-only days agreed with the Minister;
- (d) to accommodate any public holiday in addition to those specified in regulation 7(1) that may be introduced in 2023 or 2024.

Compare: 2020 No 38 Schedule 21 cl 4

9 Multiple timetable arrangements

A board may run a multiple timetable arrangement for a period that the board specifies for a school it administers to accommodate the education of students enrolled at another school that does not have adequate facilities available for those students if the board—

- (a) has adequately consulted its staff, the parents of its students, and the local community about the proposed multiple timetable arrangement; and
- (b) considers that the multiple timetable arrangement is appropriate in the circumstances; and
- (c) has taken all reasonable steps to notify every affected student and a parent of the student in writing of the multiple timetable arrangement and the time periods each day for which the affected student's timetable runs.

Compare: 2020 No 38 Schedule 21 cl 5

Schedule 1
Transitional, savings, and related provisions

r 4

Part 1
Provisions relating to these regulations as made

There are no transitional, savings, or related provisions in these regulations as made.

Schedule 2

2023: school terms and holidays

r 6(1)(a)

Term	Start date	End date	Holidays
1 (10 weeks)	Between Monday 30 January (at the earliest); and Tuesday 7 February (at the latest)	Thursday 6 April (86 to 96 half-days)	Public holiday: Monday 6 February (Waitangi Day) School holiday: Friday 7 April to Sunday 23 May (includes Good Friday, Easter Monday, and Easter Tuesday)
2 (10 weeks)	Monday 24 April	Friday 30 June (96 half-days)	Public holidays: Tuesday 25 April (ANZAC Day), Monday 5 June (Sovereign's Birthday) School holiday: Saturday 1 July to Sunday 16 July (includes Matariki)
3 (10 weeks)	Monday 17 July	Friday 22 September (100 half-days)	School holiday: Saturday 23 September to Sunday 8 October
4 (10 weeks)	Monday 9 October	No later than Wednesday 20 December (up to 104 half-days)*	Public holiday: 23 October (Labour Day) School holiday: 5 or 6 weeks (from school's closing date until opening date of school the following year)

*For primary, intermediate, and special schools: or a day in December that ensures that the school has been open for instruction for a minimum of 386 half-days in 2023. For secondary and composite schools: or a day in December that ensures that the school has been open for instruction for 380 half-days in 2023.

Schedule 3

2024: school terms and holidays

r 6(1)(b)

Term	Start date	End date	Holidays
1 (10 weeks)	Between Monday 29 January (at the earliest); and Wednesday 7 February (at the latest)	Friday 12 April (90 to 102 half-days)	Holidays during term: Tuesday 6 February (Waitangi Day), 29 March (Good Friday), 1 April (Easter Monday), and 2 April (Easter Tuesday) School holiday: Saturday 13 April to Sunday 28 April (includes ANZAC Day)
2 (10 weeks)	Monday 29 April	Friday 5 July (96 half-days)	Public holidays: Monday 3 June (Sovereign's Birthday), Friday 28 June (Matariki) School holiday: Saturday 6 July to Sunday 21 July
3 (10 weeks)	Monday 22 July	Friday 27 September (100 half-days)	School holiday: Saturday 28 September to Sunday 13 October
4 (10 weeks)	Monday 14 October	No later than Friday 20 December (up to 98 half-days)*	Public holiday: Monday 28 October (Labour Day) School holiday: 5 or 6 weeks (from school's closing date until opening date of school the following year)

*For primary, intermediate, and special schools: or a day in December that ensures that the school has been open for instruction for a minimum of 384 half-days in 2024. For secondary and composite schools: or a day in December that ensures that the school has been open for instruction for 380 half-days in 2024.

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations come into force on 1 January 2023. They specify when schools must be open in 2023 and 2024.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Education.



Cabinet Legislation Committee

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.

Education (When State Schools Must Be Open) Regulations 2022

Portfolio **Education**

On 17 November 2022, the Cabinet Legislation Committee:

- 1 **noted** that Schedule 21 of the Education and Training Act 2020 (the Act) will be repealed on 1 January 2023;
- 2 **noted** that in June 2022, the Cabinet Social Wellbeing Committee agreed to transfer existing requirements in Schedule 21 into new regulations for when State schools must be open [SWC-22-MIN-0119];
- 3 **noted** that Parliamentary Counsel and Crown Law have advised that the regulation-making power under section 638(2)(e) of the Act does not allow a sub-delegation of power from the Governor-General to the Minister of Education, and therefore parts of Schedule 21 that empower the Minister to specify terms, minimum half days and circumstances for exceptions cannot be replicated in regulations;
- 4 **noted** that it is not possible to replicate the parts of Schedule 21 that involve a power of the Minister of Education in regulations made under the Act's current provision;
- 5 **agreed** to recommend that Cabinet rescind the decision referred to in paragraph 2 above; and instead
- 6 **agreed** to create Regulations for when State schools must open in 2023 and 2024, consistent with the requirements and Minister's notices issued under Schedule 21, to ensure opening hours requirements are maintained while legislative change is sought;
- 7 **agreed** that the Regulations will:
 - 7.1 replicate the existing Schedule 21 clauses that do not involve sub-delegation of power to the Minister of Education, as listed in Appendix 1 to the submission under LEG-22-SUB-0196;
 - 7.2 specify minimum half-days/length of the school year and terms that schools must observe in 2023 and 2024 according to those already agreed and published by the Minister of Education under Schedule 21;
 - 7.3 specify that schools may close to observe a funeral or tangi of a current student or staff member, or to otherwise deal with a traumatic incident;

- 7.4 specify circumstances for when schools may be allowed to open for fewer half days:
- 7.4.1 construction at a school has taken longer than expected and it can't stay open any longer because it is already open until 20 December (the latest date that a school can close);
 - 7.4.2 a school has buildings that are identified as uninhabitable on short notice;
 - 7.4.3 to accommodate Teacher Only days allotted for 2023 and 2024;
 - 7.4.4 to accommodate any additional public holiday introduced in 2023 or 2024;
- 7.5 specify that a board can run multiple timetable arrangements for a specified period at its school or schools to accommodate the education of students from another school that does not have facilities available for those students, if:
- 7.5.1 the board has adequately consulted parents, staff, and the local community about the proposed multiple timetable arrangement;
 - 7.5.2 the proposed multiple timetable arrangement is appropriate in the circumstances;
 - 7.5.3 the board has taken all reasonable steps to notify every affected student and parent of the student in writing of a multiple timetable arrangement;
 - 7.5.4 the time-period for each day during which the affected student's timetable runs;
- 8 **noted** that the Minister of Education is not intending the Regulations to provide for additional schools (that do not have prior authorisation) to adopt alternative terms in 2023 and officials have been directed to undertake further work in 2023 on the approach to facilitating alternative terms from 2024 onwards;
- 9 **noted** that the Education (When State Schools Must Be Open) Regulations 2022 give effect to the policy proposals in paragraphs 6 and 7 above;
- 10 **noted** that the Education (When State Schools Must Be Open) Regulations 2022 come into force on 1 January 2023;
- 11 **authorised** submission to the Executive Council of the Education (When State Schools Must Be Open) Regulations 2022 [PCO 24975/10.0].

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Michael Wood (Chair)
Hon Kiri Allan
Hon Dr David Clark
Hon Meka Whaitiri
Hon Kieran McAnulty
Dr Duncan Webb, MP

Officials present from:

Officials Committee for LEG