

Note: unless otherwise stated, all redactions on this and all following pages are made in accordance with s9(2)(f)(iv) of the Official Information Act 1982



Education Report: Funding for schools in lieu of requests for parental donations

| | | | |
|--|--|--------------|-----------|
| To: | Hon Chris Hipkins, Minister of Education | | |
| Date: | 15 November 2018 | Priority: | High |
| Security Level: | Budget sensitive | METIS No: | 1163756 |
| Drafter: | s 9(2)(a) | DDI: | s 9(2)(a) |
| Key contact and number: | Alanna Sullivan-Vaughan | Round robin: | No |
| Messaging seen by Communications team: | N/A | | |

Purpose of report

The purpose of this paper is for you to:

- **agree** to an approach for proceeding with the donations scheme
- **note** there are a number of risks that may undermine the policy intent, some of which are mitigated depending on the implementation approach taken.

It updates previous advice on the commitment outlined in the Speech from the Throne to provide schools with additional funding if they agree not to ask parents for donations [METIS 1096125 refers].

Summary

1. Equitable access to education is a government priority. The donations scheme supports this by addressing some of the financial barriers faced by parents.
2. Schools have an obligation to provide free education and enrolment; however, we have observed and know from parental complaints that some schools do not always clarify that donations are voluntary and some request other curriculum-related payments. The Ministry does not systematically monitor compliance but does work with schools to seek effective ways of dealing with unlawful behaviour.
3. While requests for donations are lawful, parents can be put under considerable pressure to pay them. However, the donations policy by itself does not address the issue of unlawful charges and other legal entities will still have the ability to request donations. These risks will be difficult to mitigate even with monitoring of compliance, which may require legislative change. This limits the overall effectiveness of the policy.
4. In light of these risks, this paper presents two options for implementing the policy in the 2020 school year that require funding to be secured through Budget 2019. An alternative option would be to delay implementation until the 2021 school year, with funding sought through Budget 2020. This would enable consideration of the policy design in the context of the wider work programme, specifically the Review of Tomorrow's Schools and work on equity, which are likely to help enable the objectives of the donations scheme.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that we estimate the maximum possible cost of the donations scheme to be [REDACTED] million over 4 years, given the potential for the majority of schools to take up the offer as some risks are difficult to mitigate

Noted

- b. **agree** that either

- (i) the donations scheme is taken forward for Budget 2019 as a high-trust model (i.e. without legislative change)

OR

Agree / Disagree

- (ii) the donations scheme is taken forward for Budget 2019 with legislative changes to enable recovery of any funds paid to schools who do not comply with the scheme rules

OR

Agree / Disagree

- (iii) the donations scheme is deferred until Budget 2020 to allow consideration in light of potential significant policy changes to school governance (**recommended**)

Agree / Disagree

- c. **agree**, if proceeding with the donations scheme for Budget 2019 (option (i) or (ii) above):

- (i) to qualify for the funding in lieu of requests for parental donations, boards of trustees must agree to not seek either general or specific donations from parents

Agree / Disagree

- (ii) boards of trustees would be required to make an annual declaration that they will adhere to the requirements of the policy

Agree / Disagree

- (iii) the monitoring of boards of trustees' compliance relies on a combination of parental complaints and risk-based monitoring

Agree / Disagree

- (iv) where boards of trustees contravene the policy, they will be ineligible for the scheme in future years (exact time period to be determined)

Agree / Disagree

- (v) the budget bid includes additional resourcing to monitor all schools' compliance with the obligation to provide free education and enrolment

Agree / Disagree

Proactive release recommendation

- d. **agree** that this Education Report is not proactively released at this time because it is Budget sensitive

Agree / Disagree


Andrea Schöllmann
Deputy Secretary
Education System Policy


Hon Chris Hipkins
Minister of Education

___/___/___

5/2/19

Background

1. We understand that one of your priorities for Budget 2019 is to take forward the commitment in the Speech from the Throne to give schools an additional \$150 per student payment in exchange for their agreement not to ask parents for donations ("the donations scheme"). The sector is also anticipating this will happen soon.
2. This paper updates our previous advice on this issue [METIS 1096125 refers].
3. We have identified three key objectives of the donations scheme:
 - a. Direct more funding to schools serving communities where parents are less likely to be able to make financial contributions to their children's school(s)
 - b. Reduce the pressure on parents to pay any voluntary contributions requested by schools
 - c. Improve adequacy of funding for all schools.

The statutory right to free education

4. Section 3 of the Education Act 1989 entitles domestic students aged 5-19 the right to free enrolment and free education in state schools.¹ This means that boards of trustees cannot charge or compel any payments associated with delivery of the curriculum.
5. Guidance on how the Ministry of Education interprets the law on payments by parents is provided in the recently updated Ministry Circular 2018/01 *Payments by parents of students in schools* (attached as Annex 1). This update was brought about because of a change to the rules on seeking donations for out-of-zone enrolments, where the Secretary for Education issued instructions under section 11G of the Education Act 1989 that had the effect of banning schools with enrolment schemes from seeking donations for enrolment costs.

Is education in the compulsory schooling sector genuinely free?

Although schools have an obligation to provide free education, we have observed that schools do not always fulfil this obligation

6. We know that some boards of trustees do not consistently adhere to the legal obligation to provide free education. In particular, some charge subject fees and use various means to compel payments that should be voluntary.
7. The Ministry of Education is limited in its ability to systematically monitor schools' compliance with the obligation to provide free education, so we cannot quantify the extent of the issue. However, we do follow up on complaints made about individual schools' practices where possible. It is not always possible to follow up on complaints as some complaints are made without naming the school, due to parents' fear of potential negative consequences for their children.

¹ The definition of state schools includes state-integrated schools.

While donations are voluntary, in practice it appears that some schools reinforce an expectation that parents make financial contributions

8. Donations are a mechanism that state and state-integrated schools use to fund a higher level of educational provision than that funded by government. As donations are voluntary, parents may pay them in full, in part, or not at all.
9. In practice, many boards of trustees request both a general donation and specific donations relating to curriculum activities (such as field trips and camps) and other purposes. As boards of trustees are not permitted to charge for anything associated with the curriculum,² specific donations are one avenue for boards to request payments relating to curriculum activities.
10. While requesting donations is not unlawful, schools vary in how clearly they communicate to parents that they are optional. For instance, some schools send out invoices³ that might label donations as voluntary, but still include them in the total amount requested. It is unlawful to include unpaid donations in a total labelled 'Balance due' or 'Amount owed'. Practices that can contribute to the expectation that parents pay donations include offering payment plans, making donations opt-out rather than opt-in, and 'discounts' on the total donations requested for parents with multiple children at the school.⁴
11. The way some boards request financial contributions may put pressure on parents to pay: for instance, some schools make the argument that donations are necessary to deliver the quality of education that parents expect. They argue that parental contributions enable the school to deliver far more than is required by the New Zealand curriculum.
12. There are some examples of high decile schools arguing they are underfunded compared to low decile schools, and therefore parents ought to contribute the difference. Some versions of this argument stem from a misunderstanding of funding for disadvantage: lower decile schools are allocated more funding in recognition of the additional costs of educating a higher proportion of students from more disadvantaged backgrounds. Higher decile schools are not funded for these costs they do not face.
13. Parents may also feel obliged to pay to avoid potential negative consequences for their child at school. For example, some schools may withhold privileges such as the school yearbook or access to the school ball from students whose parents have not paid donations.⁵ Other schools have been known to publically identify those whose parents have paid a donation by providing bag tags or by allowing only those students to wear mufti on mufti day. Such practices are unlawful.

The right to free education and enrolment is not consistently enforced

14. The current model for monitoring schools' compliance primarily relies on parental complaints, which likely makes an assumption that parents are aware of the guidance

² With the exception of take-home items where there is prior agreement to pay for the materials used.

³ For instance, many state-integrated schools need to send out invoices for attendance dues, which are compulsory. These invoices can include requests for donations, but donations must be separated out from amounts due for payment.

⁴ Ministry Circular 2018/01 states that schools cannot offer a discount on early payment of donations because a discount implies the payment is a compulsory charge. The same applies to sibling discounts.

⁵ Ministry Circular 2018/01 states that no student should be denied privileges because a parent has not paid a donation.

on what schools can and cannot charge for. Even if parents do understand that boards cannot compel any payments from them, they may still feel pressured to financially contribute to the school.

15. It is difficult to consistently enforce the right to free education and enrolment because we are limited in our ability to systematically monitor all schools' compliance. The Ministry employs four financial advisers to monitor all schools' financial practices, therefore they tend to focus primarily on parent complaints and work with those schools we know to be in financial trouble.
16. When complaints about schools' practices are received, we can work with the school to ensure they are following the law. The statutory interventions framework could be used when boards do not change their practices; however, to our knowledge statutory interventions have not yet been applied to address any school's non-compliance with the law on free education and enrolment.

Policy response

17. We have developed three broad options for you to work towards the overall objective of achieving genuinely free education in the schooling sector:
 - a. Option 1: take the donations scheme forward for Budget 2019, as a high-trust model with no changes to current legislation
 - b. Option 2: take the donations scheme forward for Budget 2019, including legislative changes to enable recovery of funds paid to schools who are later found to not be complying with the policy
 - c. Option 3: delay the donations scheme until Budget 2020. This will give us the opportunity to consider how it can be taken forward in conjunction with the Government response to the Review of Tomorrow's Schools, potentially as part of a wider work programme on free education.
18. All three of these options allow for the introduction of the donations scheme from either 2020 or 2021.
19. A bid for the donations scheme is currently included in the Budget 2019 package. However, if you choose option 3, we will delay this bid until Budget 2020. The donations scheme would then be designed and implemented in a way that accounts for any changes to school governance resulting from the Review of Tomorrow's Schools. It is likely that these changes will also impact the extent to which risks associated with the scheme (detailed below) could apply to a Budget 2020 bid. These changes may also present an opportunity to improve guidance for schools and the accountability settings around free education and enrolment.

Policy design options

20. If you decide to proceed with the donations scheme for Budget 2019 (option 1 or 2), early decisions on the high-level design of the policy will enable work to get underway to support quality implementation for the 2020 school year. Boards of trustees are likely to need to take a decision on whether they opt in to the new arrangement by early July 2019.⁶ This means we will need to provide clear information on the detail of the policy immediately following the Budget 2019 announcement.

⁶ Boards who do not opt in to the scheme initially will still have the opportunity to do so the following year (for payments starting school year 2021), as well as in subsequent years.

21. For all three options, we recommend that any policy:

- includes clear guidelines for schools on the conditions they must fulfil to remain eligible for the scheme, to be co-designed with principals and parents
- require boards to make an annual declaration that they will adhere to the requirements of the policy as stated in the guidelines
- covers both general and specific donations. If the policy were limited to general donations only, then we would expect requests for specific donations to increase over time, undermining the policy intent and increasing the fiscal cost.

22. If either option 1 or option 2 is taken forward, we recommend that the Budget bid includes additional departmental resourcing⁷ for the monitoring of all schools' compliance with the right to free education and enrolment. This will help mitigate the risks around schools opting in to the policy and substituting the revenue from donations with unlawful charges.

Monitoring

23. The continuum of high-level choices around monitoring arrangements is set out in the table below. Any of these options can be taken forward with or without legislative change.

| | Light approach | Moderate approach | Most rigorous approach |
|---------------------|---|--|--|
| Monitoring approach | Annual declaration from the board to comply with the policy guidelines. No direct monitoring, but the Ministry follows up complaints from parents. | As for 'light approach' but includes risk-based monitoring (around 20% of schools annually) of compliance by the Ministry. | As for 'light approach' but with annual monitoring of all participating schools. |
| Cost | Minimal additional resourcing required | \$0.51 million departmental resourcing | \$0.51 million departmental resourcing |

24. A high-trust model would involve relying on parental complaints as the main mechanism for identifying schools the Ministry needs to investigate. To facilitate parental awareness, steps need to be taken to ensure parents will know whether their school has opted in to the policy and what the guidelines are. To ensure visibility, we recommend requiring schools to publicise (e.g. on their website) that they have opted in, and also making this information available on the Ministry's online 'Find a School' tool. There is a risk that parents will not complain if they think the school could lose funding as a result (for instance, if non-compliant schools are removed from the scheme), so we recommend taking the moderate approach as above.

25. You previously agreed that reliance on parental complaints should be complemented by risk-based monitoring of compliance [METIS 1096125 refers].

26. Further work is required to develop the details of the risk-based monitoring arrangements. These might involve participating boards providing additional information to the Ministry. Additional departmental resourcing will be required to investigate complaints from parents, undertake the risk-based monitoring and work with schools to resolve issues.⁸

⁷ Likely to be a combination of additional School Finance Advisers and Roll Auditors.

⁸ The estimate we have included in the bid is 4 FTE at a total cost of \$0.51 million per annum.

Responding to schools who contravene the donations scheme guidelines

Option one: no legislative change

27. Implementing the donations scheme under the current legislation means that there are limited consequences for schools who are found to not be complying with the rules of the scheme.
28. Removing non-compliant schools from the scheme is likely the most effective deterrent possible under current legislative settings. If you choose to proceed with this option, then you would need to determine the period of time a school remains ineligible for the scheme.
29. You could also make use of the existing statutory interventions framework for boards who are non-compliant with the policy, for instance by using lower level interventions such as a requirement to provide information or comply with a performance notice. If a lower level intervention is unsuccessful, it could then escalate to removal from the scheme and/or more serious statutory interventions. Higher-level interventions (such as appointing a limited statutory manager) would require stricter criteria to be met before their application could be considered.

Option two: legislative change

30. Recovery of funds paid to schools who are later found to be non-compliant with the donations scheme guidelines would be difficult to enforce under the current legislative settings. This is because the legislation does not explicitly authorise recovery of funds paid subject to particular conditions.⁹ This means that any policy to recover funds from non-compliant schools should include legislative changes to clarify the conditions of opting in to the policy, and the consequences for breaching it.

Option Three: deferring the donations scheme until Budget 2020 (recommended)

31. Deferring the donations scheme until Budget 2020 would allow consideration of the policy design in light of any changes resulting from the Review of Tomorrow's Schools. Any potential significant policy changes to school governance will likely alter the risks presented by the donations scheme at present.
32. Deferring the donations scheme would also allow it to be considered as part of a wider work programme on ensuring free education and enrolment. This could include work on improving system-wide enforcement of the law.
33. Option three is the Ministry's preferred option.

Risks associated with the donations scheme

34. If you wish to proceed with the donations scheme for Budget 2019, we have identified some key risks to achieving the policy objectives.

⁹ Section 79(3) allows 'supplementary grants' to be paid to boards subject to the condition that it will be used for the purposes set out in the grant. However, this requirement that the funding be used for the *purpose* of replacing parental donations is far less explicit/open to various interpretations compared to setting a *condition* that schools who opt in are banned from seeking parental donations.

Schools might opt in to the donations scheme but not be compliant with their statutory obligation to provide free enrolment and education

35. Some boards of trustees do not consistently adhere to the legal obligation to provide free education. In particular, some unlawfully charge or compel payments for curriculum-related items (e.g. subject fees, charges for school camps and field trips). Preventing some schools from seeking donations does not address unlawful practices.
36. As described earlier, the Ministry of Education is limited in its ability to systematically monitor schools' compliance with the obligation to provide free education. This means there is a risk that schools opt in to the \$150 per student payment while substituting donations with unlawful charges, undermining the intent of the policy.

Mitigating the risk of participating schools not complying with their statutory obligations

37. We have considered whether participating schools should be required to attest their compliance with their obligation to provide free education and enrolment as a condition of opting in to the scheme.
38. A policy that more closely scrutinised participating schools' compliance with the law (i.e. including other unlawful charges, as well as compliance with the donations scheme guidelines) is likely to be seen as discriminatory and inequitable between schools, especially if the schools who initially opt in are more likely to be serving disadvantaged communities. There is also a risk that a school's attestation that they follow the law is seen to be given in exchange for the \$150 per student payment; this undermines efforts to ensure *all* schools understand and follow the law.
39. Overall, we recommend that the best way to mitigate this risk if the donations scheme is taken forward in Budget 2019 is to also monitor all schools' compliance with the right to free education and enrolment at a further cost of \$0.51 million per annum.

Separate legal bodies associated with the school could continue to request donations

40. Parents will still be free to donate to schools who have opted in to the scheme, the only change is that these schools cannot ask parents for the donations. This is because the scheme is directed at preventing schools from asking for donations. It is difficult to see why it would be desirable to prevent schools from receiving any donations, as these can come from a variety of sources (e.g. community organisations).
41. Legally separate entities cannot be subject to the board's agreement to not ask for donations. This table summarises the effect of the policy on who may ask whom for donations once a board has opted in:

| Who can be asked for donations? | | | | | |
|---------------------------------|----------------------------|---------|--------------|------------------|------------------|
| | | Parents | Wider family | Any other person | Any organisation |
| Who can ask for donations? | Board of trustees | No | Yes | Yes | Yes |
| | Proprietor | Yes | Yes | Yes | Yes |
| | Parent/Teacher Association | Yes | Yes | Yes | Yes |
| | Any person or organisation | Yes | Yes | Yes | Yes |

42. This is a risk because parents may not view some organisations as legally separate, due to them being associated with the school; for instance, parent-teacher associations,

alumni associations, and proprietors of state-integrated schools. Many schools send out one request for a set of payments of which some go to the board, some go to the parent-teacher association, and some to the proprietor (in the case of state-integrated schools).

Action to mitigate this risk could have adverse effects

43. The only way to comprehensively address the potential risk that separate legal entities request donations from parents would be to prevent boards from accepting donations from sources other than parents. This would require legislative change. However, we do not recommend pursuing this option as it will be very difficult to uphold the intent of the donations scheme without negatively impacting boards' ability to form partnerships with the community and fundraise for items that could benefit the school (e.g. food programmes, overseas exchange trips and sports tournaments).
44. No action may be necessary, as it is likely parents will know that their school's board has opted in to the scheme. The policy design could include requirements that a school makes it public (e.g. on their website) that they have opted in to the scheme, and this information could also be included on the Ministry's online 'Find a School' website. As a result, parents may be more likely to complain when they think requests from other organisations appear to come from the school. This approach is likely to require that we clarify for boards and parents that other legal entities will still be permitted to request donations from parents once a school has opted in.

The donations scheme may reinforce the expectation that some parents financially contribute to their children's schools

45. This policy would operate on an opt-in basis. There is a risk that, if not all schools opt in, it may reinforce that it is normal, or even expected, that parents make financial contributions to their children's schools. Schools that do not opt in would be making it clear that they prefer to rely on parental contributions instead. It is likely that they will need to justify these requests to parents in light of the opportunity cost of a guaranteed \$150 per student payment.
46. Some schools justify their requests for donations because elements of the curriculum they deliver are beyond what the Government funds them for. For example, these may be schools that make extensive use of field trips, and expensive materials for subjects.

This policy does not facilitate sector acceptance of the need to fund schools equitably

47. The school funding system aims to fund schools equitably: students from disadvantaged backgrounds cost more to educate, and other students cost less. This is why schools serving students from disadvantaged backgrounds receive higher per-student funding.
48. Some high-decile schools currently justify their requests for donations by arguing that parental donations are needed to "compensate" for underfunding as a result of how decile funding works.¹⁰ This argument misunderstands why equity funding is needed and why some schools need it more than others. It is likely that schools that continue to request donations instead of accepting the \$150 per student payment will rely on this type of justification. Although this already happens at present, it is a particular risk at a time where it is crucial to ensure there is greater understanding within the sector of why equity funding is necessary.

¹⁰ For instance, some high decile schools determine the amount to request from parents with reference to the amount of funding a decile 1 school receives:

https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11994149



How well does the donations scheme meet the policy objectives?

| | Option 1: | Option 2: | Option 3: |
|--|---|---|---|
| | High trust model with no legislative changes | Legislative changes to enable recovery of funds from non-compliant schools | Defer until Budget 2020 to consider in light of changes to school governance and work on equity |
| Directing more funding to schools serving communities with parents who are less likely to be in a position to contribute financially | It is highly likely that schools serving these communities will opt in to the policy and thus receive more funding; however it does not do this in a direct way. The needs of these schools can be more comprehensively addressed through the ongoing programme of work to improve resourcing and system settings for equity. | | |
| Reducing pressure on parents | Some schools that opt in will no longer ask parents for any donations, but the scheme alone cannot guarantee this, as it is contingent on all schools complying with the law on free education and enrolment. Additional resourcing to monitor all schools' compliance with the law may allow us to improve some schools' compliance with the law, however our enforcement mechanisms are limited to the current statutory interventions framework. | Schools' compliance with their statutory obligations is a governance issue, and the government response to the Review of Tomorrow's Schools may offer an opportunity to better explore options for helping schools meet their legal obligations (for instance, improved accountability settings). | |
| Improving adequacy of overall school funding | The donations scheme relates to schools' <i>perceptions</i> of funding adequacy and uses an opt-in mechanism to give some schools access to more funding. This means that some schools may not opt in, as they do not consider it worthwhile to join the scheme because they are able to receive more money from parental donations. These schools may justify this to parents by arguing that government funding remains inadequate. | The adequacy of funding question also extends to how governance settings can ensure funding is used effectively, so it would make sense to consider this objective as part of the response to the Review of Tomorrow's Schools. The changes from the Review of Tomorrow's Schools may involve flow-on impacts to the school funding system. | |
| Contribution to Budget 2019 wellbeing objectives | This scheme best aligns with Budget Priority 4: reducing child poverty and improving child wellbeing, including addressing family violence. It may contribute to the goal of reducing child poverty through reducing the financial pressure on parents. As noted above the scheme alone may not reduce the pressure on parents to make donations to their children's schools. | | |
| Cost | Highest | Moderate | Unknown (depends on related policy changes) |
| Risks | Highest, due to a limited ability to enforce under current legislative settings | More schools likely to be deterred from breaking the scheme rules if it is possible funding will be recovered from them. Some risks still remain. | Unknown (depends on related policy changes) |



Estimated fiscal cost and assumptions

Estimated fiscal cost

49. Any costing based on the number of schools currently reporting donations around the \$150 per student threshold would be subject to considerable uncertainty, due to the following issues around the data we have on the value and make-up of donations:
- the value of donations reported by schools in their financial data is not limited to donations from parents. It combines parental donations with those from other sources, such as from community trusts and businesses
 - it is likely that many schools record the value of specific donations as activity fees rather than donations.¹¹
50. We have estimated the maximum possible cost of the policy because the actual cost depends on decisions about how to manage the risks of schools substituting donations with unlawful charges and continuing to request donations through separate legal entities.
51. Table 1 provides information on the estimated maximum fiscal cost of the policy, i.e. the scenario where all eligible schools opt in to the policy.

Table 1: maximum cost of donations scheme, i.e. all schools opting in (\$ millions)

| | 2019-2020 | 2020-2021 | 2021-2022 | 2022-2023 | 4 yr total |
|---|-----------|-----------|-----------|-----------|------------|
| Cost of all schools opting in to donations policy | | | | | |
| Departmental costs of enforcement | 1.02 | 1.02 | 1.02 | 1.02 | 4.08 |
| TOTAL COST (\$m) | | | | | |

Costing assumptions

52. We have assumed that:
- the policy starts in the 2020 school year (boards decide to opt in mid-2019)
 - the policy applies to both general and specific donations
 - the departmental costs are estimated at \$1.02m per annum to cover 8 FTE. This includes 4 FTE to monitor and enforce the new donations scheme, and 4 FTE to monitor and enforce compliance with all schools' obligations to provide free enrolment and education. This additional resourcing is required to provide capacity to investigate complaints, undertake the proposed risk-based monitoring (for the donations scheme), and provide support to resolve issues with schools.

¹¹ Activity fees are intended to represent income received as payment for non-curriculum items such as weekend sport and visiting performers.

Next steps

53. If you decide to proceed with this commitment for Budget 2019, we will start the work necessary to prepare for implementation in the 2020 school year. This includes co-designing guidelines for schools, setting up resourcing and monitoring processes, and preparing work for any legislation changes (if proceeding with option 2).

Annexes

Annex 1: Circular 2018/01 Payments by parents of students in schools

Annex 1: Circular 2018/01 Payments by parents of students in schools

| | | |
|--------------------------|-------------------------|--------------------------------------|
| Date 22 June 2018 | Circular 2018/01 | Category Financial Governance |
|--------------------------|-------------------------|--------------------------------------|

Payments by parents of students in schools

| | |
|---|--|
| This circular is about | Requests for payments by schools. |
| This circular replaces | Circular 2013/06 issued July 2013. |
| The action needed is | Ensure current practice is consistent with advice provided in this circular. |
| It is intended for | Parents of students in schools. Boards of trustees and principals of schools. Proprietors of state-integrated schools. Sponsors of partnership schools kura hourua. |
| For more information about this circular | Direct any inquiries about this circular to the national office of the Ministry of Education or your local Ministry of Education school finance advisor. |

Introduction

This circular provides advice on the rights of parents, students, boards of trustees, proprietors, and sponsors about requests for donations and other forms of payment in schools.

The previous circular on payments by parents (Circular 2013/06) has been refreshed, and this version includes a summary chart with examples. The substance of the advice in the previous circular has not changed – because the law has not changed. There is one exception related to enrolment costs in schools with enrolment schemes (see 'Enrolment' under 'Item categories' in the appendix).

Interpretation

In this circular:

- *curriculum* means The National Curriculum composed of The New Zealand Curriculum and *Te Marautanga o Aotearoa*. In the case of a partnership school kura hourua, it means the curriculum agreed to in the contract between the Crown and the sponsor
- *parent* includes guardian or caregiver
- *schools* mean state schools (integrated or non-integrated) and partnership schools kura hourua, or their boards of trustees, sponsors, or proprietors – as the context requires.

Structure of this Circular

This circular has key information for parents and schools, including an appendix with further information, as well as a summary chart with examples of different types of payments.

Key information for parents and schools

Donations

Schools may:

- ask for donations (for either general or specified purposes).

Parents may:

- pay donations in full, in part, or not at all. Paying donations is a choice.

Schools must:

- clearly indicate to parents that payment of any requested donation is voluntary
- inform parents that they **may claim an income** tax credit from Inland Revenue in relation to donations made to the school.

Schools cannot:

- describe voluntary contributions or donations as “fees”, “charges”, or “levies”
- make a request for donations in a form or manner that implies an obligation to pay
- apply interest charges to unpaid donations
- offer a discount on early payment of donations, as a discount implies the payment is a compulsory charge.

Enrolment

Schools cannot:

- charge parents for information about enrolment
- demand any form of payment to confirm enrolment
- include donations as part of a checklist of enrolment forms or show them as a step in the enrolment process.

Goods and services

Schools may:

- sell goods or services to students or families.

Schools must:

- ensure that prior agreement is received before any charges are made for supplying goods or services.

Parents must:

- pay for goods and services they have agreed to purchase/sign up for.

Schools cannot:

- demand payment of any bonds, insurance, membership fees or levies
- levy parents for any operational costs like heat, light and water charges
- compel parents to buy items from the school.

Curriculum

Schools cannot:

- charge a fee to cover the cost of either tuition or materials used in the provision of the curriculum
- exclude students from trips or activities that are part of curriculum delivery because of their parents' inability or unwillingness to pay a requested donation
- compel students to take part in fundraising for curriculum-related matters
- charge for tertiary-level courses that are purchased by the school and then offered as part of the school programme for senior students.

Enforcing payments

Schools may:

- remind parents (particularly at the end of a year) of amounts of any debt owed or a donation the school would like to receive. Schools should take care to differentiate between repeated requests for a donation, and actual debts relating to items or activities for which a student or family agreed to pay or the non-payment of attendance dues.

Schools cannot:

- withhold information or privileges because a parent has not paid a donation
- alienate students because parents have not paid a donation
- pressure parents into making a voluntary purchase or donation
- mislead parents in any way as to the nature of payments included in payment or reminder notices
- use debt collection methods to attempt to compel the payment of donations, such as issuing "late payment" notices, or other forms of communication warning of any adverse consequences of non-payment.

Parents and schools should also note that:

- students, or their families, should never be pressured or otherwise made to feel embarrassed over non-payment of either a debt or a requested donation
- where a family has agreed to buy a good or service, then a normal debt has been incurred and may be enforced if unpaid
- the public identification in any way of parents who have or have not made a donation is improper and likely to breach the Privacy Act 1993. Similarly, any debt owed should be treated as a private and confidential matter between the school and the family concerned
- no student should be harassed or denied information or privileges because a parent has not paid a donation. Any action designed to pressure parents into making a donation could be seen as a contravention of the Education Act 1989 (the Act)
- linking the provision of certain items or activities such as the school magazine, student identity cards, free registration on Athletics, or subsidised travel for sports teams directly to the payment of the donation may affect the tax treatment of the payment. It could indicate that the school donation is not a gift made to benefit the school, but instead is a payment for goods and services. This could mean that donation tax credits cannot be claimed and the school must pay GST
- withholding an item can have other consequences – for example, if the student ID card is used as a swipe card to enable students to borrow library books, to withhold

the card from students whose parents have not paid the school donation would have the effect of denying the student a privilege that is available to other students

- schools cannot withhold information¹² or items such as reports or certificates to encourage parents to pay a donation or to resolve unpaid debts. Schools are required by the National Education Guidelines to report on student progress and students have a right to access personal information held by the school without charge
- proprietors of state-integrated schools can charge attendance dues. This is the only compulsory payment in the school system.

Further advice and guidance

Parents

If parents have concerns regarding payments sought by schools, the first approach should be to the principal, then to the board of trustees, proprietor, or sponsor (as the case may be).

Parents can also seek advice from the Student Rights Service (formerly the Parents Legal Information Line) on 0800 499 488. The Student Rights Service is a national, free phone service for parents and students wanting information and assistance on issues for children and young people at school.

Schools

Principals and boards of trustees can contact the New Zealand School Trustees Association, or their local Ministry of Education School Finance Advisor.

Information from Inland Revenue

Inland Revenue has reissued its Public Ruling on GST in schools. The Public Ruling can be found here: <http://www.ird.govt.nz/technical-tax/public-rulings/2018/>

Inland Revenue has also developed advice and guidance about tax credits for donations made to schools. The guidance for state non-integrated schools and the guidance for state-integrated schools can both be found here: <http://www.ird.govt.nz/technical-tax/questions/questions-general/>

If it is brought to the attention of the Ministry of Education that a board of trustees, proprietor, or sponsor may be acting unlawfully in respect of matters covered by this Circular, the Ministry will work with the parties to resolve the matter based on the advice set out in this Circular.

Issued by
Katrina Casey,
Deputy Secretary,
Sector Enablement and Support

Ministry of Education, National Office, Mātauranga House, 33 Bowen Street,
P O Box 1666, Wellington, New Zealand. Phone 04-463 8000, Fax 04-463 8001

¹² In responding to requests under either the Official Information Act 1982 or the Privacy Act 1993 schools should be aware that non-payment of a debt or a donation would not be regarded as sufficient reason to withhold information from a requester.

Appendix Further Information

Legislation

The right to free enrolment and free education

Section 3 of the Education Act 1989 (the Act) states that every domestic student is entitled to free enrolment and free education at a state school or partnership school kura hourua from the person's 5th birthday until 1 January following the person's 19th birthday¹³.

This means schools cannot charge domestic students a fee for enrolment or attendance, or for delivery of the curriculum. The only exception to this rule is that proprietors of state-integrated schools can charge attendance dues.

Proprietors of state-integrated schools

Section 447 of the Act enables proprietors to collect attendance dues once those dues have been approved by the Minister of Education and notified in the *New Zealand Gazette*. The attendance dues are compulsory. Section 449 states that non-payment may result in Court action, and the principal of the school may suspend a student and remove that student's name from the school register if the dues are not paid.

Section 451 makes provision for proprietors to seek contributions (donations) for any purpose. Those contributions must be voluntary. Proprietors must make audited accounts of those contributions available on request to parents and other contributors.

Payment types

There are three types of payments made to schools by parents – donations, purchase of goods and services, and attendance dues.

Donations

Payment is voluntary. Donations can be for general purposes, or for a specific purpose such as library books or sports equipment.

They can be requested, but payment cannot be compelled or enforced. It must be made clear that donations are voluntary.

GST is not payable on donations, and tax credits can be claimed.

Purchase of Goods and Services

Payment must be made for the purchase of goods or services, but only after a parent has freely chosen to make the purchase.

Schools must provide students and parents with information on any charges before they agree to receive goods or services.

GST is payable, and tax credits cannot be claimed.

Attendance Dues

Attendance dues are compulsory, and payable to the proprietor of a state-integrated school. This is the only instance of a compulsory charge in schools. Payment can be enforced.

¹³ Students with a relevant Section 9 Agreement including those in the Ongoing Resourcing Scheme (ORS) can stay at school to the age of 21.

The level of attendance dues must not be greater than the amount approved by the Minister of Education and published in the *New Zealand Gazette*. There can be no interest charged for unpaid dues. A bond cannot be requested.

GST is payable, and tax credits cannot be claimed.

Item categories

There is a wide range of items or activities for which payments may be sought in schools. These items fall into four categories – enrolment, curriculum, goods and services, and compulsory.

Enrolment

It is unlawful to charge or compel any payment for anything associated with the enrolment process.

Schools that do not have an enrolment scheme may seek donations towards enrolment costs. Care needs to be taken to ensure parents do not perceive that the donation is a necessary part of the enrolment process.

Schools with enrolment schemes can no longer seek donations towards enrolment costs. A July 2017 amendment of the Secretary's Instructions makes the seeking of donations for out-of-zone enrolment activities unlawful¹⁴. *This is currently the only exception to the general guidance that donations can be sought for any purpose.*

Curriculum

It is unlawful to charge or compel any payment for anything associated with delivery of the curriculum.

Donations may be sought for curriculum items.

Goods and services

It is lawful for schools to charge for goods or services where these relate to items or activities outside of the curriculum. Parents must not be placed under an expectation or obligation to purchase/sign up. Purchasing/signing up is voluntary.

Schools can demand payment only when there has been clear agreement to acquire the goods or services. In the absence of an agreement, any demand for payment is unlawful. Unless parents agree to purchase goods and services, they will not be liable for any payment.

Schools may also ask for, but cannot insist on, payment in advance for various goods or services it knows are likely to be provided during the year.

Compulsory

Attendance dues for state-integrated schools are the only compulsory payment in the school system.

¹⁴ See <https://gazette.govt.nz/notice/id/2017-go3461>

Provision of information for parents

All parents should be given clear information showing which payments are enforceable and which are voluntary. At the beginning of the school year, or on a student's enrolment, parents should be made aware of the school's policy about the request for donations and other forms of payment.

When referring to donations, schools must not use the words "fee", "levy", or "charge", or any other term which implies that payment is compulsory. Schools should not indicate that it is compulsory to buy goods and services.

Notices or reminders which are poorly set out, or where items are not correctly described, can cause confusion. In prospectuses, website information, and notices to parents, schools must clearly distinguish between charges and donations.

In state-integrated schools, it must be made clear which payments are being sought by the board of trustees and which are being sought by the proprietor.

Except for attendance dues in state-integrated schools and charges for goods or services in all schools, all other requests for payment should indicate clearly that they are a request for a donation and accordingly are voluntary.

Parents should be advised that tax credits can be claimed for donations.

Some schools have related Trusts which raise funds on behalf of the school. In information provided to parents and the wider community it needs to be clear for what and for whom the funds are being raised.

When specifying and collecting donations, schools may find it useful to take the following steps:

- specify the amount of a donation in the school prospectus or in an information letter to parents.
- state that the donation is voluntary.
- describe what the donation(s) will be used for.
- state how and to whom payment is to be made.
- state how and when a receipt will be provided (needed for tax credit purposes).
- advise how parents can pay for donations and charges – whether by cash, cheque, credit card, automatic payment, internet banking or eftpos; in lump sum or monthly, fortnightly or weekly payments, or via payroll giving¹⁵.

Some key issues for schools and parents

Subject fees

The right to free education guaranteed by Section 3 of the Act means that there should be no charges associated with the delivery of the curriculum. In turn, this means that subject fees are unlawful.

As examples, it is unlawful to charge a fee for Year 12 Geography or Year 7 Technology – but it is acceptable to ask for a donation towards the school's costs associated with those courses.

Take-home component

¹⁵ <http://www.ird.govt.nz/income-tax-individual/tax-credits/payroll-giving/>

Schools can apply a charge where a student has chosen to buy and take home an item. As with the supply of any good or service, schools can demand payment only when there has been clear agreement to pay for the take-home item.

A student or parent is never obliged to buy any item produced at school.

Schools cannot refuse to register a student on a course on the grounds that the student has not agreed to pay for a take-home item.

Seeking agreement to pay donations

It is unlawful for a school to ask parents to sign an agreement to pay donations, which implies or imposes an obligation to pay. Such an agreement has the effect of “contracting out” of the right to free education guaranteed by section 3 of the Act, which would be both illegal and unenforceable.

School policies and processes

Schools should have policies and processes covering requests for and collection of payments, and should ensure that teachers and parents are aware of these policies.

Specialist units

A number of schools have specialist units to provide alternative means of delivering the curriculum. Examples include Montessori, Arrowsmith, and Samoan language immersion.

As these units are a means of curriculum delivery, it is unlawful to compel parents to make any payment to enable students to participate. It is also unlawful to require or to ask parents to sign an agreement to pay (see 'Seeking agreement to pay donations' above).

It is lawful to ask parents to make a donation towards costs, but no students can be excluded from participation because of their parents' inability or unwillingness to pay a requested donation.

Relief teachers

Payments cannot be requested to meet the cost of relief teachers during a school camp or during other activities associated with delivering the curriculum or assessment of students.

Lunches for day students

Schools with boarding hostels are able, if they wish, to provide meals to day students. This is an example of the purchase of goods and services. As such, the purchase must be voluntary, and students should be able to freely opt in to the meal programme rather than be compelled to sign up.

Fundraising by Proprietors

Under Part 33 of the Act, Proprietors may fundraise. This means Proprietors of state-integrated schools may request donations. Parents cannot be compelled, however, to pay donations or to become involved in fundraising activities.

Schools' financial management of payments

Invoices

Requests for payment must make a clear distinction between attendance dues, charges, and donations - and between board of trustees' and proprietors' items.

Ideally, invoices should specify attendance dues (for state-integrated schools) and charges for agreed optional goods or services only. Strictly speaking, schools cannot "invoice" donations, as non-payment of donations does not give rise to a debt that is owed. On the other hand, it can make practical sense to list all requests for payments in a single document. In such cases, it must be made very clear which payments are voluntary and which are not.

It is misleading to include a donation within a total which is described as 'Balance Due', or as being owed by a family.

As charges for curriculum items are unlawful, they should not appear on an invoice.

Recording donations

Schools should not record unpaid donations in accounts receivable. As donations are voluntary, the school has no right to them. Consequently, unpaid donations do not form part of the assets of the school.

State-integrated schools

Attendance dues and donations to a proprietor must be accounted for separately from board of trustees items, since they are the income of the proprietor, and not of the board. In particular, there must be no suggestion that attendance dues and donations are one and the same thing.

Donations and charges may be collected by the proprietor on behalf of the board of trustees, and vice versa. Schools need to ensure they have sufficient controls to ensure all funds end up in the correct entity. It is essential that cash collected by one entity on behalf of the other is paid over to the other party as soon as practicable. Boards and proprietors should not net off amounts owed to the different parties.

Proprietors may donate their funds (except attendance dues) to any entity, including boards of trustees. But it is unlawful for a *board of trustees* to donate its funds to any entity, because those funds are public money which must be used only for legitimate purposes in accordance with the board's functions and responsibilities set out in the Act.

Public money

Payments (including donations) become part of board of trustees' funds once given to the school, and thus become public money. They must be accounted for and spent by the board in accordance with the board's normal legal responsibilities.

Payroll giving

Boards of trustees automatically have approved Inland Revenue donee organisation status and so are eligible for payroll giving¹⁶.

¹⁶ <http://www.ird.govt.nz/income-tax-individual/tax-credits/payroll-giving/>