25 January 2011

Education Report: Background overview of section 156 schools

Executive summary

1. Your office has requested a briefing providing background information about schools operating under section 156 of the Education Act 1989.

2. There are 23 designated character schools that have been established under section 156. A group can make a proposal to the Minister of Education to open a new school or redesignate an existing school as a designated character school. The Minister of Education retains absolute discretion over these decisions.

3. Ministry analysis has identified a number of areas where seeking to establish charter schools under section 156 would severely restrict the Government's scope to implement the proposals as set out in the Confidence and Supply Agreement between the National Party and the ACT Party. These restrictions would apply across many areas, including the mission of a charter school, freedom to introduce performance-related pay and other innovations and the role of the sponsor in governance and accountability arrangements.

Recommendations

We recommend that you

a. Note the information contained in the briefing about the process for establishing a school under section 156 and the features of designated character schools operating under this section.

b. Note that establishing charter schools under section 156 would significantly restrict the implementation of the model as described in the Confidence and Supply Agreement between the National Party and the ACT Party.

c. Note that the Ministry will shortly provide advice on what could be done under private schools legislation.

Frances Kelly
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Schooling Policy Group

NOTED APPROVED

Hon John Banks
Associate Minister of Education

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**Education Report: Background overview of section 156 schools**

**Purpose of report**

1. This report provides an overview of how schools are established under section 156 of the Education Act 1989 (the Act) and the features of schools that are operating under this section. The report also offers an analysis of the fit between the legislative requirements of section 156 and the proposals for charter schools, as outlined in the Confidence and Supply Agreement between the National Party and the ACT Party.

**Background**

2. Schools operating under section 156 of the Education Act 1989 are known as designated character schools. The text of section 156 is provided in Annex A. Designated character schools are state schools that have a particular character that sets them apart from ordinary state schools and kura kaupapa Māori. Learners can enrol at a designated character school only if their parents accept the particular character of the school.

**Number of schools operating under section 156**

3. There are 23 designated character schools operating under section 156. The chart below indicates how many designated character schools were opened in each year.

![Chart 1: Year of opening for section 156 schools](chart-image)

**Process for establishing a designated character school**

4. Schools can become a designated character school under section 156 in two ways, either a new school is established under this section or an existing school is redesignated to become a designated character school. In both cases the Minister of Education decides whether to establish or redesignate a school.
5. There is a proposal process for establishing a designated character school. Proposals may come either from groups of parents or from existing state schools seeking redesignation. Guidance for proposing groups is available from the Ministry of Education. Groups are required to provide the following information:

a. Basic details about the proposing group, students who are likely to attend the proposed school, proposed composition (age range, roll by year and maximum roll) and consultation carried out by the group.

b. A description of the proposed character and education programme of the school, including how this meets the criteria in section 156 to be different from ordinary state schools and not available in any other state school that students could conveniently attend.

c. A statement of the aims, purposes and objectives of the proposed school.

d. Outline teaching plans for each year level that demonstrate the school will offer a balanced, developmental teaching and learning programme in accordance with the New Zealand Curriculum (the English-medium curriculum) or Te Marautanga o Aotearoa (the Māori-medium curriculum).

e. Proposals for the governance and management of the school, showing how the school will follow the National Education Guidelines (NEGs) and National Administrative Guidelines (NAGs).

f. A description of the proposed site and the current ownership status.

g. Proposed staffing for the school, showing that the teachers will be able to teach according to the proposed designated character and the requirements of the curriculum, the NEGs and NAGs. Also, how staffing issues, such as conditions and appraisals, will be managed.

h. A draft budget for the next three years and an explanation of how sound financial systems will be developed for the proposed school.

6. The Ministry prepares a report for the Minister of Education on the proposed school. The report assesses each aspect of the information and proposals provided by the proposing group. The Ministry also assesses the ongoing viability of the school, the impact on the existing network of schools using demographic and roll information, the area and the impact on educational services in the area, such as transport services. The report includes an analysis of the overall cost effectiveness of the proposed school compared to alternatives for meeting the educational needs of the learners concerned and whether the proposals fit with current Government goals for education.

7. The Minister retains absolute discretion to approve or reject a proposal for a designated character school. Proposing groups are informed that a school may not be established or redesignated even if the proposal meets the minimum criteria in section 156 and they have shown that the school would be likely to provide good educational outcomes for learners.

8. If the Minister approves the proposal, the processes for establishing the designated character school follow. An early task is that the Minister appoints an establishment Board of Trustees, taking account of nominations from the proposing group. The tasks to establish the school will vary significantly depending on whether an existing school is being redesignated or a new school established.
How designated character differ from other schools

9. This section summarises the features of designated character schools that set them apart from other state schools and kura kaupapa Māori. The existing designated character schools divide into five broad groups described below.

Kura ā iwi

10. Kura ā iwi deliver Māori-medium education for year 1-6 or year 1-8 learners. Learning programmes are based on the tikanga of the iwi the kura is affiliated to, rather than on Te Aho Matua philosophies (which kura established under section 155 follow). An example of Kura ā iwi is Te Kura Toitu o Te Whaiti-nui-a-Toi, which is affiliated with Ngāti Whare.

Kura ā iwi Wharekura

11. Kura ā iwi wharekura are established like Kura ā iwi – to deliver learning programmes that align to the tikanga of the iwi they are affiliated with. These kura offer Māori-medium education for year 1-13 learners. An example of Kura ā iwi wharekura is Te Kura ā iwi o Whaketupuranga Rua Mano, which is guided by the tikanga of its three founding iwi, Te Āti Awa, Ngāti Raukawa and Ngāti Toa Rangatira.

Kura Māori

12. Kura Māori deliver Māori medium education with an educational philosophy agreed with the whānau whakahaere (school community) associated to it at the time. The learning programmes implemented must be defined in the school charter and permeate through all aspects of the kura. This is different to the models above as these kura do not base their learning programmes on Te Aho Matua or directly affiliate with the iwi of the region they are based in. It is, however, expected that the iwi is acknowledged through the tikanga the kura follows. An example of Kura Māori is Te Kura Māori o Porirua, which is guided in its learning practices by its whakatau iwi 'He kura te tangata' (the human being is precious).

Bilingual schools

13. Designated character bilingual schools offer education in a bilingual setting. These schools often design their own curriculum based on both the New Zealand Curriculum and Te Marautanga o Aotearoa. Most bilingual schools offer education in English and Māori, although Kia Aroha College offers bilingual units in English and Pasifika languages as well as English and Māori.

Alternative education philosophies

14. The final group of designated character schools are English-medium schools that offer a different educational philosophy to traditional state schools. There are currently two in operation, Discovery 1 and Unlimited Paenga Tawhiti (both in Christchurch city), which have their special character based on individual, student guided learning.
Legislative requirements and charter school proposals

15. The following paragraphs analyse how far the proposals for charter schools as described in the Confidence and Supply Agreement between the ACT Party and the National Party could be implemented using a school established under section 156 of the Act.

16. Schools established under section 156 are state schools and must operate under the provisions of education legislation, the State Sector Act, Crown Entities Act, Public Audit Act, Local Government Official Information and Meetings Act, and other legislation governing the state sector.

Mission

'would typically be some or all of the following':

- a rigorous academic focus
- a traditional curriculum
- faith-based
- to serve a target population of students
- based on specific governance principles e.g. Te Aho Matua
- to focus on a particular language, vocational training or other area of specialisation.'

17. When a school is established under section 156, the Minister of Education has to specify the aims, purposes and objectives that constitute its designated character and these form part of its charter under Part 7 of the Act. The Minister has to be satisfied that the students would get an education of a kind that differs significantly from that which they would get at an ordinary state school and is not available at any other state school that the children can reasonably attend. This is quite a high threshold test.

18. Section 156 schools could have a rigorous academic focus as part of their designated character. They cannot use academic achievement to refuse enrolment of children as long as their parents accept the aims, purposes and objectives of the special character.

19. As a state school, section 156 schools must offer the National Curriculum – either the New Zealand Curriculum or Te Marautanga o Aotearoa. There is no provision for boards to use any other curriculum. There is potential to develop a local curriculum as long as it is within the provisions of the National Curriculum.

20. Establishing a faith-based school is not feasible under section 156. State primary schools are by law secular in terms of their teaching programme (section 77 of the Education Act 1984), and secondary schools are largely secular and non-sectarian by practice because of the right of students to opt-out of any religious observances and the backdrop of the New Zealand Bill of Rights. The Private Schools Conditional Integration Act 1975 provides the only route for faith-based schools within the state system, in the form of state integrated schools.

¹ Text in italics in this section of the paper comes from the Confidence and Supply Agreement between the National Party and the ACT Party
21. A school established under section 156 could have a focus on a target population of students but it must accept applicants that are not part of that target population as long as their parents accept the aims, purposes and objectives of the designated character.

22. There would be some limited ability for a school to be based on specific governance principles but these could not conflict with the governance model required by the Act. Schools that follow the principles of Te Aho Matua are established under section 155. These sections specifically mandate the role of Te Aho Matua in the schools’ governance and teaching and prescribe the responsibilities of its guardians, Te Rūnanga Nui o Ngā Kura Kaupapa Māori o Aotearoa.

23. A school established under section 156 could specialise in a particular language or form of vocational training, but this must be within the boundaries of the National Curriculum. It must also teach the range of curriculum programmes that all state and state integrated schools provide.

Operation, governance and accountability

"Groups proposing to operate charter schools can come from a range of not-for-profit and for-profit management groups who will be granted a charter by an authorised body. Boards will be responsible for all aspects of the school operation but can contract this out."

24. The Minister of Education is, in effect, the authorising body for a section 156 school, because it is the Minister that establishes the school under that section. Under the Act, any other “authorised body” could only be advisory.

25. All state schools must have a Board of Trustees, appointed or elected in accordance with the Act. Under section 75 the Board is given responsibility to ‘control the management’ (governance) of the school. The Crown’s relationship is with that board – resourcing must be provided to it and it must meet the statutory accountabilities prescribed by the Act. A Board of Trustees is a not-for-profit Crown entity under the Crown Entities Act 2004 and does not have power to contract out its core responsibilities.

Role of the sponsor

‘Schools would be externally accountable to sponsors, a special accountability group within the Ministry of Education and to external review by the Education Review Office. Charter schools will be required to enter into a contractual relationship with sponsors who are to be responsible for ensuring that charter schools meet agreed student achievement goals as well as financial and operational standards.’

26. Accountability to sponsors by a school established under section 156 would have to be a private arrangement between the board and the sponsor. In practice, entering such an arrangement would be optional for a board. The accountability requirements for student achievement goals, financial and operational standards for state schools are set out in the Act. Neither a Board of Trustees nor the Crown can contract those accountabilities out to other parties such as a sponsor. The role of the sponsor might be limited to having some representation on the school Board of Trustees.
Additional freedoms

‘Charter schools will be free to set the length of the school day and year, set their own teaching practices, raise their own revenues, pay their teachers according to performance and use any approved curriculum/qualification.’

27. The length of school terms and the school year is set for state schools by the Minister of Education (sections 65A-65E). There is some flexibility for the Minister to vary these requirements for individual schools but not to delegate those decisions to the Boards of Trustees. The length of the school day is set by the Board but must be a minimum of 2 hours in the morning and 2 hours in the afternoon.

28. Teachers have to be registered teachers (section 120) and adhere to the professional standards for teacher registration, including those for teaching practices. State sector teachers who are PPTA or NZEI members must be covered by the applicable collective agreement. Performance-related pay provisions in those collective agreements are weak as they are limited to attestation by the employer of satisfactory performance leading to incremental pay progression. Teachers who are not union members must be offered an individual employment agreement (IEA) which must be promulgated or approved by the Secretary for Education (under delegation from the State Services Commissioner).

29. The good faith and prohibition on preference provisions of the Employment Relations Act (ERA) mean that IEAs cannot be seen to undermine the collective bargaining process or confer preferential treatment on non-union employees on the basis of their non-union status (which in effect means that an IEA cannot offer benefits significantly better than those in the collective agreement if the non-union teachers are doing substantially similar work to the unionised teachers).

30. National Education Goal 8 requires state schools to provide access for students to a nationally and internationally recognised qualifications system. This means that every state school must offer access to NCEA but can choose to offer other internationally recognised qualifications as well.

Funding and networking

‘Schools may operate as a network. Public funding would continue to be by way of normal operations grant funding, possibly including funding targeted at disadvantaged groups. Some capital funding may be available as might be funding to cover rental costs.’

31. There are limited provisions in the Act for state schools to be part of a network through a combined Board of Trustees and these have seldom been used in practice. Any networking arrangement would be purely voluntary. Schools currently established under section 156 get the full range of resourcing entitlements for state schools of their size and type. Any charter school established under this section would presumably have the same expectations.

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More than 85% of state teachers are union employees
The proposals for property arrangements would be similar to those for current section 156 schools.

**Enrolment**

'Schools would be required to accept all students who apply for entrance although they may set geographical boundaries as long as these do not deny opportunities to disadvantaged students. When demand exceeds supply, schools may choose to conduct entrance on a ballot basis.'

32. The Secretary for Education sets a maximum roll for a school established under section 156. Schools must accept all students who apply unless their parents do not accept the aims, purposes and objectives that constitute the school's designated character. Only if the school is approaching its maximum roll and an enrolment scheme is applied under Part 2 of the Act could a geographical boundary be set.

**Conclusion**

33. Establishing charter schools under section 156 would significantly restrict the implementation of charter schools in the way that is set out in the Confidence and Supply Agreement. The Ministry is preparing advice on what could be done under the private schools legislation as this may, in the short-term, allow greater flexibility to set up the first charter schools, although still not entirely as envisaged in the Confidence and Supply Agreement. We are of the view that changes to legislation would be required to fully implement the proposals as described in the Confidence and Supply Agreement.
Annex A – Text of section 156 of the Education Act 1989

“Designated character schools

(1) Subject to subsection (2), the Minister may, by notice in the Gazette when establishing the school, designate a State school as a designated character school.

(2) The Minister shall not establish a school as a designated character school unless satisfied that—
(a) the parents of at least 21 people who would, if the school were established, be entitled to free enrolment there, want the school to be established; and
(b) the parents want the school to have a character that is in some specific way or ways different from the character of ordinary State schools; and
(c) the parents have given the Minister a clear written description and explanation (expressed in the form of aims, purposes, and objectives for the school) of the way or ways; and
(d) students at a school with such a character would get an education of a kind that—
(i) differs significantly from the education they would get at an ordinary State school; and
(ii) is not available at any other State school that children of the parents concerned can conveniently attend; and
(e) it is desirable for students whose parents want them to do so to get such an education.

(3) The Minister may in the Minister’s absolute discretion refuse to establish a designated character school.

(4) The notice establishing a designated character school shall specify the aims, purposes, and objectives that constitute its designated character; and every charter and proposed charter for the school shall be deemed to contain them.

(5) The notice shall also specify the constitution of the school’s board.

(6) The Minister may from time to time, after consultation with the board of a designated character school, by notice in the Gazette amend—
(a) the aims, purposes, and objectives that constitute the school’s designated character; or
(b) the constitution of its board.

(7) The Secretary must from time to time, by written notice to the designated character school, fix a maximum roll of the school, and—
(a) the board must ensure that the number of students enrolled at the school is not more than the maximum roll; and
(b) the board may refuse the enrolments of people whose parents do not accept the aims, purposes, and objectives that constitute the school’s designated character.

(8) Except as provided in this section and section 11PB, this Act and the Education Act 1964 shall apply to every designated character school as if it is not a designated character school.”
National Education Guidelines

The National Education Guidelines are defined by Sections 60A of the Education Act 1989

The National Education Guidelines have five components:

1. **National Education Goals**, which are
   a. statements of desirable achievements by the school system, or
      by an element of the school system; and
   b. statements of government policy objectives for the school system;

2. **Foundation Curriculum Policy Statements**, which are statements of policy concerning teaching, learning, and assessment that are made for the purposes of underpinning and giving direction to –
   a. The way in which curriculum and assessment responsibilities are to be managed in schools; and
   b. National curriculum statements and locally developed curriculum.

3. **National Curriculum Statements** (that is to say statements of –
   a. The areas of knowledge and understanding to be covered by students;
   b. The skills to be developed by students; and
   c. Desirable levels of knowledge, understanding, and skill, to be achieved by students, during the years of schooling).

4. **National Standards**, which are standards, in regard to matters such as literacy and numeracy, that are applicable to all students of a particular age or in a particular year of schooling.

5. **National Administration Guidelines (NAGs)**, which are guidelines relating to school administration and which may (without limitation) –
   a. set out statements of desirable codes or principles of conduct or administration for specified kinds or descriptions of person or body, including guidelines for the purposes of section 61:
   b. set out requirements relating to planning and reporting including –
      c. communicate the Government’s policy objectives:
      d. set out transitional provisions for the purposes of national administration guidelines.
Each board of trustees is required to foster student achievement by providing teaching and learning programmes which incorporate The National Curriculum as expressed in *The New Zealand Curriculum 2007* or *Te Marautanga o Aotearoa*.

Each board, through the principal and staff, is required to:

(a) develop and implement teaching and learning programmes:
   i. to provide all students in years 1-10 with opportunities to achieve for success in all areas of the National Curriculum;
   ii. giving priority to student achievement in literacy and numeracy, especially in years 1-8;
   iii. giving priority to regular quality physical activity that develops movement skills for all students, especially in years 1-6.

(b) through a range of assessment practices, gather information that is sufficiently comprehensive to enable the progress and achievement of students to be evaluated; giving priority first to:
   i. student achievement in literacy and numeracy, especially in years 1-8; and then to
   ii. breadth and depth of learning related to the needs, abilities and interests of students, the nature of the school's curriculum, and the scope of The National Curriculum as expressed in *The New Zealand Curriculum* or *Te Marautanga o Aotearoa*;

(c) on the basis of good quality assessment information, identify students and groups of students:
   i. who are not achieving;
   ii. who are at risk of not achieving;
   iii. who have special needs (including gifted and talented students); and
   iv. aspects of the curriculum which require particular attention;

(d) develop and implement teaching and learning strategies to address the needs of students and aspects of the curriculum identified in (c) above;

(e) in consultation with the school's Māori community, develop and make known to the school's community policies, plans and targets for improving the achievement of Māori students; and

(f) provide appropriate career education and guidance for all students in year 7 and above, with a particular emphasis on specific career guidance for those students who have been identified by the school as being at risk of leaving school unprepared for the transition to the workplace or further education/training.
NAG 2

Each board of trustees, with the principal and teaching staff, is required to:

(a) develop a strategic plan which documents how they are giving effect to the National Education Guidelines through their policies, plans and programmes, including those for curriculum, National Standards, assessment and staff professional development;

(b) maintain an on-going programme of self-review in relation to the above policies, plans and programmes, including evaluation of information on student achievement; and

(c) report to students and their parents on the achievement of individual students, and to the school’s community on the achievement of students as a whole and of groups (identified through NAG 1(c) above) including the achievement of Māori students against the plans and targets referred to in 1(e) above.

NAG 2A

Where a school has students enrolled in years 1-8, the board of trustees, with the principal and teaching staff, is required to use National Standards to:

(a) report to students and their parents on the student’s progress and achievement in relation to National Standards. Reporting to parents in plain language in writing must be at least twice a year;

(b) report school-level data in the board’s annual report on National Standards under three headings:
   i. school strengths and identified areas for improvement;
   ii. the basis for identifying areas for improvement; and
   iii. planned actions for lifting achievement.

(c) report in the board’s annual report on:
   i. the numbers and proportions of students at, above, below or well below the standards, including by Māori, Pasifika and by gender (where this does not breach an individual’s privacy); and
   ii. how students are progressing against the standards as well as how they are achieving.

These requirements do not apply to boards of trustees that are working towards implementing Te Marautanga o Aotearoa until 2 February 2011. For the avoidance of doubt, the first annual report to which subclauses (b) and (c) apply is that which reports on the 2011 school year, except for boards of trustees that are working towards implementing Te Marautanga o Aotearoa when the relevant report is that which reports on the 2012 school year.
NAG 3

According to the legislation on employment and personnel matters, each board of trustees is required in particular to:

(a) develop and implement personnel and industrial policies, within policy and procedural frameworks set by the Government from time to time, which promote high levels of staff performance, use educational resources effectively and recognise the needs of students; and

(b) be a good employer as defined in the State Sector Act 1988 and comply with the conditions contained in employment contracts applying to teaching and non-teaching staff.

NAG 4

According to legislation on financial and property matters, each board of trustees is also required in particular to:

(a) allocate funds to reflect the school's priorities as stated in the charter;

(b) monitor and control school expenditure, and ensure that annual accounts are prepared and audited as required by the Public Finance Act 1989 and the Education Act 1989; and

(c) comply with the negotiated conditions of any current asset management agreement, and implement a maintenance programme to ensure that the school's buildings and facilities provide a safe, healthy learning environment for students.

NAG 5

Each board of trustees is also required to:

(a) provide a safe physical and emotional environment for students;

(b) promote healthy food and nutrition for all students; and

(c) comply in full with any legislation currently in force or that may be developed to ensure the safety of students and employees.

NAG 6

Each board of trustees is also expected to comply with all general legislation concerning requirements such as attendance, the length of the school day, and the length of the school year.
National Education Goals

NEG 1
The highest standards of achievement, through programmes which enable all students to realise their full potential as individuals, and to develop the values needed to become full members of New Zealand's society.

NEG 2
Equality of educational opportunity for all New Zealanders, by identifying and removing barriers to achievement.

NEG 3
Development of the knowledge, understanding and skills needed by New Zealanders to compete successfully in the modern, ever-changing world.

NEG 4
A sound foundation in the early years for future learning and achievement through programmes which include support for parents in their vital role as their children's first teachers.

NEG 5
A broad education through a balanced curriculum covering essential learning areas. Priority should be given to the development of high levels of competence (knowledge and skills) in literacy and numeracy, science and technology and physical activity.

NEG 6
Excellence achieved through the establishment of clear learning objectives, monitoring student performance against those objectives, and programmes to meet individual need.

NEG 7
Success in their learning for those with special needs by ensuring that they are identified and receive appropriate support.

NEG 8
Access for students to a nationally and internationally recognised qualifications system to encourage a high level of participation in post-school education in New Zealand.

NEG 9
Increased participation and success by Māori through the advancement of Māori education initiatives, including education in Te Reo Māori, consistent with the principles of the Treaty of Waitangi.

NEG 10
Respect for the diverse ethnic and cultural heritage of New Zealand people, with acknowledgment of the unique place of Māori, and New Zealand's role in the Pacific and as a member of the international community of nations.