

SCHOOL CLOSURE

DESKFILE

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VERSION 3 – SEPTEMBER 2012

Ministry of Education

VERSION CONTROL

Author	Release Date	Version	Comment	Authorised Senior Manager Operational Policy Design
	March 2012	Version 2	Draft Version	Philippa Pidd
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The word document for this desk file is held on the 'J' Drive at National Office and suggestions for alterations can be made through the Senior Manager (Operational Policy Design).

This deskfile is for School Closures. It includes state maintained schools, designated character schools and Mura established under section 155 of the Education Act 1989. This deskfile also outlines the process for the cancellation of an integration agreement and closure of a state integrated school.

It aims to provide information on the process for staff in the Ministry's National, Regional and Local Offices.

There is a different process for school mergers.

The deskfile is reviewed annually.

It was last reviewed on September 2012 and is current from that date.

It is next due to be reviewed and updated on or before September 2013

Also refer to the following Deskfiles:

- Integration
- EDI or JSIF Payments
- School mergers

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Section 1: Closure decision processes

Background

1. There are two legal processes that result in the closure of a school – it may be a voluntary closure or a Minister initiated process. This deskfile covers both. The processes for each are slightly different, with an extra consultation period required as part of the Minister initiated (or ‘forced closure’) process.
2. Ideally, when a school is no longer educationally or economically viable, the community will reach a decision that the school should be closed. There may be times when Ministry staff will encourage a Board to consider this option because student numbers are so low and a good education can be obtained nearby.
3. There is no legislative guidance on what constitutes an educationally or economically viable school but as funding is based on student numbers, roll projections will play an important part in the decision making process.
4. There will be a few instances where closure will be recommended by:
 - the Education Review Office after a series of poor audit/review reports
 - a viability study which is included in the tasks of the Commissioner.
5. The authority and process for closing a state integrated school or a special school is not the same as for a state school.

NOTE: In the case of a commissioner having been appointed to replace the Board of trustees of a school, the word ‘Commissioner’ can be read for ‘Board’ or ‘Board of Trustees’ throughout this deskfile.

6. The Ministry recommends that when a Board is considering any change that will affect staff employment, advice should be sought from the New Zealand School Trustees Association or the Board’s employment adviser. The Ministry also encourages Boards to make contact with the appropriate employees’ union(s).

Legislation

7. Schools are closed by the Minister of Education under section 154 of the Education Act 1989 after consulting the Board of the school.

Section 157(3)(f) also requires the Minister to consult with the Boards of all state schools where the roll may be affected by the proposed closure.

- In this case 'state schools' include English medium state schools, Māori medium state schools (s155 and s156) and state – integrated schools.
- There is no directive from legislation or within Ministry policy as to what constitutes the educational or economic viability of a school. This needs to be determined on a case by case basis taking into account the particular situation of the school, the issues it is experiencing, its local schooling network, school transport provision etc.

Ministry's Guiding Principles

8. When the Ministry undertakes consultation with a Board and / or school community, it is based on the following principles:

- The educational needs of and possible benefits for students are paramount.
- The principles of Te Tiriti o Waitangi underpin all our interactions with Māori communities, schools and individuals. Appropriate consultation - in terms of timing, methods and outcomes - is vital.
- Schools and communities need time to think through the implications of demographic trends and the impacts of these changes on the future of their schools
- The impact of the decision on other schools, communities and the wider network needs to be considered, as no school exists in isolation.
- We must ensure that all processes be fair and transparent.
- The people being affected by the decision need to have the opportunity to influence the decision-maker in making a decision.
- The consultation includes the Ministry's target groups (Māori, Pasifika, Learners with special education needs and students from low decile communities)
- The decision-maker needs to make the best possible decision based on all relevant information.

9. The Minister must keep an open mind about the future of the school (and be seen to keep an open mind until the final decision is made. This means that references to closure should be 'proposed closure' and 'should the school be closed'.

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Section 2: Actions before the formal request from the board is received

10. Usually the Senior Adviser in the Regional / Local office with responsibility for the particular school where the Board is considering possible closure works with the Board and staff through this process. If the Senior Adviser is not able to do this, then another Ministry person should be nominated to take up this role.

Initial discussion of options with Board – role of the Ministry

11. Before meeting with the Board the Senior Adviser should meet with Ministry colleagues to determine the Ministry's view of the future place of the school in the schooling network. Questions to help this process are attached as Download 1.
12. If the Board wants help from the Ministry to consider the viability of its school then the Senior Adviser should use the questions in Download 1 to help develop a list of relevant questions for such a discussion.
13. Often the Board also needs to consider other options (as well as possible closure) which are open to it. The Senior Adviser should be part of this discussion and provide information about:
 - merger
 - becoming a second campus of another school
 - having a combined Board of Trustees with another school
 - etc

Information about these options is included in the particular deskfiles. Please contact ECP National Office if you need help collating this information. The differences between school mergers and closures are detailed in Download 3 Closure Merger Implications.

Initial discussion of options – what the Board does and how the Ministry supports

14. After deciding that closure is perhaps the best option, the Board usually talks to its school community about the future of the school (this should include the local Māori communities and any neighbouring schools which may be affected by the possible closure). If it is within a Pasifika community then this should include key members of this community.
15. This process should be robust enough to ensure that all interested parties have had reasonable opportunity to present their views. To do this they should be able to have an informed discussion about the possible ramifications of the options. In this way interested parties should feel like their comments have been heard.

16. Often it is helpful if the Ministry's Senior Adviser and the Board meets before the consultation and together develop a list of key points they want the community to know as part of the consultation. Download 2 Questions Asked by Boards and Communities is a helpful list to start with. Senior Advisers involved in this process should be familiar with responses to many of these questions, and where they are not familiar with them they should give a timeframe within which they will find out and report back to the community. They can then contact ECP National Office for the details.

17. The process of working with the Board and with the community takes time and a high level of ongoing communication is essential as various options and their implications may need to be explored over a period of months. This may require a number of meetings with the Board (six would not be unusual) as well as attendance at several Board organised meetings with the school communities.

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Section 3: Board seeks voluntary closure

18. If it becomes clear that the Board wishes to request voluntary closure, the Board formally writes to the Ministry regional or local office manager, or to the Minister directly, requesting closure.
19. If the letter is to the Minister it will come to the Senior Adviser to develop a draft reply.
20. A notice about receiving a request for possible closure should be included in the Education Weekly Update (EWU) for the Minister.
21. When ECP National Office staff are made aware that an application for possible closure has been received they will record the details on the School Reorganisation tracking sheet and alert the teacher unions and NZSTA (National Office).
22. The Senior Adviser then develops a report to the Minister – see Download 4 Education Report 1 and includes the letter as a draft reply. This draft report is forwarded to ECP National Office for internal consultation and forwarding to the Minister's office. The response letter should include two attachments: the legislation (Download 13) and a table showing the school closure process for voluntary closures (Download 15). Note that Ministers may have particular greetings that they use when writing to Boards, and these should be included in the letters.
23. When the report is approved by the Minister and the letter to the Board is signed, it formally initiates the consultation process under section 157 of the Education Act 1989. Usually the Minister's office posts the letter directly to the Board chairperson. If the Senior Adviser or Manager would prefer to deliver it by hand it should be noted in the report that the letter is to be returned to the Ministry to be hand delivered.
24. A Board of Trustees seeking voluntary closure of its school needs to be aware of the time needed for consultation about the proposed closure, reporting to the Minister of Education and for the Minister to make a decision. The Senior Adviser should discuss a timeline applicable to this particular school (note this usually takes 4-6 months, including giving the Principal notice after the closure decision has been made).

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Section 4 – Ministry seeks directed closure

25. There are times when the Board of a school will not support the decision to enter into the closure process and, instead of it being initiated by the Board, it is initiated by the Ministry. Where there is a Commissioner in a school, the directed (or forced) closure process is always used as the Commissioner does not represent the community in the same way that a Board of Trustees does.
26. The Senior Adviser with responsibility for the school will have been in contact with the Board, and have organised support for the school, before the decision is made to initiate the closure process. The Senior Adviser develops the Education Report (refer Download 4 Education Report 1) and includes the letter for the Minister's signature. The letter should include two attachments (the legislation Download 13) and a table showing the school closure process for a forced closure Download 14).
27. The draft report is forward it to ECP National Office for internal consultation and forwarding to the Minister's office.
28. When the report is approved, the letter will be signed to initiate the consultation process. Usually the Minister's office posts the letter directly to the Board Chairperson. If the Senior Adviser or Manager would prefer to deliver it by hand it should be noted in the report that the letter is to be returned to the Ministry to be hand delivered.

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Section 5 – Consultation (Round 1)

29. When the Minister has agreed to the consultation process (whether for a voluntary closure or a directed closure) the Senior Adviser:
- identifies the state and state integrated schools whose rolls might be affected if the school closes
 - writes to each of the schools whose rolls may be affected. (Refer Download 5 Consultation Letter – where the roll of the school may be affected).

30. It is usual to give four weeks for the Board to reply to the Consultation Letter. This is because Boards usually meet on a monthly basis. Be willing to extend the time frame if the Board seeks more time but do not allow unreasonable delaying tactics. If a Board does not respond, phone or email to find out if it wishes to make any comments or if it has any concerns that it wants to bring to the Minister's attention

31. If the Board of a school that is being involved in the consultation wishes to meet with the Ministry to discuss the application, the Senior Adviser should do so. The Board may be concerned about how the possible closure will affect bus routes, technology provision etc.

32. Once the consultation feedback has been received, the Senior Adviser should meet with the Board of the school requesting closure / in the closure process and discuss any concerns raised by the Boards, as part of the consultation process. The Board of the school seeking closure / in the closure process may need to be given the opportunity to respond to the concerns of schools whose rolls may be affected particularly if the other schools support closure and the school being considered for closure still has concerns about it.

33. All Boards involved need to know that the Ministry will raise all the concerns that are still unresolved with the Minister, through the next Education Report.

Consultation and Engagement with Māori

34. Consultation with the local Māori community (and where necessary iwi) should be started as soon as possible. The closure process is not complete without a full consultation with the local Māori community. It may be important to work with the appropriate Māori liaison person in the regional / local office to support this part of the process.

35. It should be noted that one of the key goals for the Ministry is raising student achievement for Māori students. Community (and iwi) support is important in raising achievement for Māori students. Senior Advisers should view engagement positively, valuing the chance to interact and get input.

Costing Information

36. The Minister will be interested in the savings to the Crown if the proposed closure is agreed. This information is determined through Resourcing. In order to get it, the Senior Adviser needs to complete a School Reorganisation Data Form giving details of the schooling network before and after the change. Refer to Download 7 for the form. The completed School Reorganisation Date Form is emailed to ECP National Office to be peer reviewed and forwarded to Resourcing. When the costing is finalised it will be returned through ECP National Office.

School Transport Information

37. Any school closure will result in a change to the Transport Entitlement Zone (TEZ) for the neighbouring schools. The Regional / Local office staff will need to develop draft TEZs and consult on these with the schools affected, highlighting any issues that arise in the report. Transport costs/savings and other implications will need to be identified through discussion with the Ministry's Transport Service Agent and these should also be included in the report.

38. The Service Agent will liaise with the transport contractor (if any), as appropriate, although the Ministry and Board may also wish to be directly involved in discussions. Note, for example, that a school closure may impact on:

- Transport Entitlement Zones for neighbouring schools current transport contract
- viability of transport services, for a single school service, or multi school service
- eligibility entitlement of students (depending on whether the nearest school is attended)
- any transport to technology classes
- eligible students for any directly resourced network that the closing school is in.

Note

- If students from a closing school choose not to go to their nearest school, their eligibility for school transport assistance will need to be checked.
- The Service Agent may need to terminate a contract as a result of the closure so it is essential that they are aware of the situation as early as possible.

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Section 6 – Report to the Minister

39. When all the relevant information is gathered from the initial round of consultation it is provided in a report for the Minister. Refer to Download 6 – Education Report 2 final report for voluntary closure.

Reminders from Legal regarding consultation and voluntary closure:

40. Under section 154(2A) of the Education Act 1989, if the Board agrees with or does not oppose the closure of its school, the Minister has the discretion as to whether or not to continue the consultation and whether to give the Board 28 extra days to provide any arguments in favour of the school remaining open. Usually in a voluntary closure, there is no need for this second round of consultation.
41. Where there is a forced closure, or where there is a Commissioner at the school at a further round of consultation is required. This time the Board (Commissioner) is given 28 days in which to give the Minister any additional final comments as to why he / she should not agree to implement the closure.
42. There is no legislative requirement that the consultation period is 28 working days (rather than 28 consecutive days). For this reason the 28 day letter should be specific about when the consultation period finishes, and where the Board / commissioners submission should be sent.
43. Once the report is drafted and signed out at the local / regional office level it is forwarded to ECP National Office for its consultation and peer review processes. Refer to Download 8 Education Report 2 Forced Closure with 28 day letter.
44. When it arrives, ECP National Office staff:
- Update tracking sheet to identify report being received in National Office
 - Get report put into Meets and ensure it is listed on the EWU list of reports for the Minister
 - Peer review report and then circulate to Property, Legal, Resourcing, School Transport and other groups as are needed (eg ECE, Special Education, Group Maori, Schooling Policy), Solicite feedback.
 - Get Ministry reviewed and forward for sign out to the Minister's office.
 - If the letter is to be returned to the Ministry to be hand delivered, this should be explicitly stated in the recommendations and on the front cover of the report.

Section 7 - Consultation (Round 2 – 28 day consultation)

45. Once the Minister has agreed to the 28 day consultation, the letters to the Board will be signed as part of the report paperwork. If the letter is to be hand delivered this should be clearly identified on the report (or else that will be posted to the Board / Commissioner of the school).
46. This consultation is not as wide as the first round. It is usually just the Board that replies, and if it wishes it can take its consultation process to the school community. Often, however, the community feedback has been recorded in the initial consultation period and rather than offering additional information this results in more of the same feedback on the proposal.

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Section 8 – Final report and decision

47. When all the relevant information is gathered for the final report, it is drafted (Download 9 - Education Report after the 28 day consultation).
48. The draft report is forwarded to ECP National Office for its consultation and peer review processes, before it is signed off and forwarded to the Minister's office.
49. ECP National Office staff:
 - Update tracking sheet to identify report being received in National Office.
 - Get report put into Meis and ensure it is listed on the EMU list of reports for the Minister.
 - Peer review report and then circulate to Property, Legal, Resourcing, School Transport and other groups as needed (eg ECE, Special Education, Group Māori, Schooling Policy). Collate feedback.
 - Get final draft reviewed and forward for sign out to the Minister's office.
 - If the letter is to be returned to the Ministry to be hand delivered, this should be explicitly stated in the recommendations and on the front cover of the report.

Following Minister's consideration of the report

With school closure reports it is often important to be in regular contact with the Minister's office to ensure you are aware of when it is signed. Once this signed ECP National Office completes the following:

- Advises local / regional office staff so they can contact the Board / Commissioner before the letter arrives. If it is to be hand delivered ECP National Office staff may collect it from the Minister's office, copy it and send the original (usually by courier) to the local / regional office staff member, so it can be hand delivered.
 - Organise for the closure to be gazetted (email it to gazette@parliament.govt.nz).
 - Inform Ministry staff (general distribution list and ERO).
 - Update tracking sheet and databases.
 - Advise NZEI / PPTA and WZSTA.
50. Once the Minister has agreed to the closure the Senior Adviser in the Local / Regional office should:
 - Contact the Board to ensure the Minister's letter has been received.
 - Coordinate a meeting with the Regional Financial Advisor and with the Board to discuss the next steps of the process.
 - Complete an RS 1 form (see Download 10) and email it to the Information Officer Shared Mailbox (Information_Officer@minedu.govt.nz).

Section 9 Industrial relations and other information for when a school closes

Industrial relations - Background

51. This information focuses on the obligations that Boards and the Ministry have to employees in relation to potential and actual school closures.
52. The Ministry of Education and the Board of Trustees are jointly responsible for the efficient and orderly winding up of the school.
53. Note that the Ministry does not give industrial relations advice to Boards or school personnel – they need to seek advice from NZSTA, PPTA / NZEI (either union or their own industrial relations adviser).

Industrial relations - Who does what?

54. The main onus of responsibility is on the Boards as the employers of affected or potentially affected employees. However, the Ministry of Education has a role in seeing that Boards are assisted/advised/informed sufficiently to meet their good employer and risk management obligations. Section 74A of the State Sector Act 1988 provides that the Commissioner of SSC may become directly involved in a dispute about the interpretation, application or operation of any collective agreement. This power has been delegated to the CEO Ministry of Education.

Industrial relations - The Employer's Legal Obligations

55. The Board of Trustees of a school has obligations to be a good employer for its teaching and non-teaching staff. While the Ministry keeps records of the teachers details (pay rates, leave taken, holiday entitlements etc), the Board keeps these details for its non-teaching staff.
When a school is closing there are always contractual obligations for the Board and its staff. Contractual obligations, i.e. employment agreements, collective and individual, almost always involve formal consultation with the affected or potentially affected employee either directly or through its representative – or both. In some cases, depending on the requirements of the employment agreement, formal negotiations may need to be undertaken on some matters before the school closure can proceed.
56. When a school is closing there are always contractual obligations for the Board and its staff. Contractual obligations, i.e. employment agreements, collective and individual, almost always involve formal consultation with the affected or potentially affected employee either directly or through its representative – or both. In some cases, depending on the requirements of the employment agreement, formal negotiations may need to be undertaken on some matters before the school closure can proceed.
57. Where there is a short period between the Minister's agreement to close a school and the school closure date (eg where there are no students left at the school and keeping it open for the staff notice period would see teaching staff being paid, but not having work to do at the school), the Ministry may become the employer of staff. In this situation the delegation for employment responsibilities is with the Regional Manager. This is usually delegated to the Senior Adviser who is managing the closure, and if the following tasks have not been completed by the Board, the Adviser will need to:
 - Give notice to staff (using template letters from NZSTA).
 - Support staff to decide on their surplus staffing option (supernumerary, retraining or accept redundancy / long service payment). Note NZEI / PPTA also provide support.

- Accept the paperwork from the teacher re their surplus staffing option and forward it to Resourcing for consideration and a decision.
- If the teacher is approved for retraining and can not find a Board to support them during this time, the Ministry may take on this role (although it is a last resort and not encouraged). This would mean the Senior Adviser needs to contact the former teacher (now student) regularly to ensure he / she is still involved in their study. Usually the closed school is kept open on the payroll system so that the teacher can be paid through it. The school is in effect closed for all other purposes.

58. Broadly speaking, consultation should initially involve the employer informing potentially affected employees of the situation that points toward any possibility of closure and giving the employees the opportunity to 'have a say' before any firm decision to close is made. Aside from consultation having to begin in sufficient time, some collective agreements stipulate when, and to some extent how, consultation must occur.

Note In addition to the above, an employee who could successfully show disadvantage or damage arising from failure by the Board or the Ministry to fully observe any legislative or other requirement related to a school's closure, might well have a claim (personal grievance) against one, the other, or both. An example of this could be failure to properly gazetted the closure.

Industrial relations – Giving Notice

59. As well as the requirement to consult, there is always (although much further down the track than the consultation phase) the need to give appropriate notice to employees whose jobs may be either altered, transferred or terminated by the school closure.

60. The periods of notice can range up to three months (e.g. for a principal who is requesting severance) depending on the employment agreement. In calculating the length of time required to properly carry out the 'industrial relations' process required in the lead up to a school closure, the relevant period of notice must be added to any foregoing period of consultation. Allowing for a minimum period of six weeks for consultation and an estimated two months notice (typical for teaching staff), it is most unlikely that the industrial relations needs of a school closure could not be met in less than three to four months, prior to the point of closure.

Note The Cleaners & Caretakers' Collective Agreement for example requires advice six weeks prior to issuing notice of termination - the two time frames may not run concurrently.

61. The Secondary Teachers' Collective Agreement envisages that a secondary school (or composite school) would close at the beginning of a school year (27 January).

Positions identified as surplus in the procedures set out in Appendix H will be effectively disestablished at the start of the next school year....

Therefore the two month notice period is from 27 November for staff under the STCA. If this date is missed, then staff have the right to be paid through to the end of the following school year.

62. Part-time or other non-permanent primary teachers do not usually have access to surplus staffing provisions unless the teacher can demonstrate that despite being part-time or non-permanent, they have a constancy of employment / history of repeated re-employment in the same position year after year. This evidence is usually a paper trail e.g. letters of re-employment, and needs to be presented to Resourcing Division who consider it on a case by case basis.

63. Teachers in job share positions – where a position is a bonafide and formal job share, and not just an informal arrangement of two different part-time positions, are entitled to redundancy etc. Evidence of a job share position would be that it was nationally advertised as a job share etc.

64. Remember that for non-teaching staff (office staff, cleaners etc) termination / redundancy etc is the responsibility of the Board. These payments will need to be made from the Board's Operational Funding.

Industrial relations - Who are you going to call?

65. Boards should seek advice from NZSTA or other legal advisers. The Ministry's Industrial Relations Division is also available to liaise with Regional Offices, as required, throughout the process.

Industrial relations - Informing Teacher Unions

66. The Secretary for Education has formally agreed that the NZEI and PPTA are to be informed (in writing to NZEI / PPTA) as early as practicable in the process of discussions about reorganisations of schools that may affect the positions or conditions of teaching staff. National Office lets the NZEI / PPTA National Office know of the proposed closure as soon as an application is received.

Industrial Relations - Relevant Parts of the Various Employment Agreements

67. It is not practical to reproduce the various references within each collective employment agreement (CA) in this deskfile, so section references are provided instead. This list is not exhaustive. In the event of proposed closure of a specific school, specific and fully detailed advice should be sought from the Industrial Relations Unit of the Ministry.

Relevant documents are:

- Primary Teachers' Collective Agreement - the whole of Part 4, Surplus Staffing; Appendix 4 School Reorganisation Staff Surplus Provisions; 2.8, Termination of Employment
- Secondary Teachers' CA –3.9, Appendix H
- Primary Principals' CA - Part 9 & 10.2
- Support Staff in Schools' CA - Part 6, Appendix B 8.6/8.7
- Caretakers & Cleaners' CA – 6.9: Appendix B 8.6/8.7
- Secondary/Area Groundstaff CA – 4.8, Appendix A
- Area School Teachers' CA – 2.13; Appendix 5
- Kairahi/ATSSD/SEA' CA - Part 4; Appendix D 8.6/8.7
- Secondary Principals' CA – Part 8; Schedule A

- Area School Principals' CA – Part 8; Schedule B
 - Individual employment agreements (IEAs) will largely reflect the relevant CA.
- (NOTE: in most agreements above the notice provisions, from the termination clause, are contained within the surplus staffing provisions. Often this is not the case, however, in the principal CAs).

Note Up to date collective agreements are available at:

www.minedu.govt.nz/employment/agreements

School Transport

68. If the school is directly resourced for school transport, it is important to ensure that the Board is following contractual provisions. For more information on this, contact the Ministry's School Transport section in Resourcing.

Note: A bus contractor must be given three months' notice. If the school is directly resourced for school transport, the Board may be liable for compensation.

The Service Agent should complete any appropriate forms to enable the School Transport section in Resourcing to adjust all appropriate payment records.

Finance

69. The Regional Financial Advisor and Senior Adviser may need to continually remind the Board that it is accountable for public funds by virtue of being a Board of Trustees under the Education Act, and a Crown Entity under the Public Finance Act 1989.

70. If the Regional Financial Advisor or Senior Adviser notes that, if there is likelihood that the Board may spend the school funds frivolously, then a Limited Statutory Manager (LSM) to manage the Board's finances can be appointed until the school closes. The Regional Financial Advisor and Senior Adviser should discuss concerns with the ECP Manager. The Residual Agent and Change Manager can also monitor this risk and mitigate if an LSM is required.

71. Under the Public Finance Act 1989 and Public Audit Act 2001, Boards have to account for all expenditure. If they use public funds for purposes which are not educational then arguably they are breaching the provision of these Acts. See Public Finance Act 1989 and Public Audit Act 2001 for relevant extracts from these Acts.

72. Individual trustees may also lose the exemption from being personally liable in terms of clause 4, Sixth Schedule of the Education Act 1989 if they do not act in good faith in pursuance of the functions of the Board. In other words, if the Board members embark on a "big spend up" and this results in the Board being insolvent, then arguably it may not have acted in good faith. In such cases the provisions of clause 4 may not cover it.

73. Boards also cannot dispose of assets without the consent of the Crown. The Board is an agent of the Crown in terms of its property and therefore should not act without Ministry consent in disposing of such property.

Property

74. As part of developing the EDI Memorandum of Agreement, the Senior Adviser should identify if any of the buildings / assets on the school site have a community equitable interest. Information about this is held on PMIS (Property Information Management System) database, and the Board is also likely to hold details of the interest.

75. Where an asset cannot be moved / relocated to another school (eg a swimming pool, tennis court etc), the Ministry will refund the community contribution to that asset. In order for this process to be implemented, the Board must provide documentation that details the amount given by the community for the asset. The same proportion of the value of the asset at the time of the disposal of the site is then returned to the community (by giving it to a group in the community that is an incorporated society).

76. Once the asset has been valued and the proportion of the total value for the community identified, the documentation showing the amount that was donated by the community and an invoice from the community group should be forwarded to ECP National Office. ECP staff will peer review these documents and forward them to Property Group in National Office, who will organise the payment to the group. Note, this payment does not come from EDI funding; it is funded through Property Group.

77. Ministry Property staff will also oversee any additional property requirements at neighbouring schools as a result of having an increased roll because of the school closure.

Trust property

78. A school Board that has received and holds in trust any property (gifts for funding scholarships, bursaries or for other educational purposes) may apply to the Public Trustee to devise a scheme to modify the trust in the light of the closure. Section 68 (4) of the Education Act 1989 relates to the situation where a school has received gifts for funding scholarships or bursaries or for other educational purposes and the trust needs variation to cover a different school. This will be part of the wind-up of the financial affairs of the school.

Note: In the case of the cancellation of an integration agreement of an integrated school the Ministry does not pay community contribution back to the community. This is because the community contribution is based around assets that cannot be relocated to another school and are usually property (hall, tennis courts, etc). In the case of an integrated school, the school property (buildings and land) is owned by the proprietor.

Real and actual costs for Boards with no money left

79. When a school runs into debt before it closes, the Board or Residual Agent should contact the Senior Advisor and Regional Financial Advisor and present a case for allowing the EDI winding generated by the closure to be advanced. ECP National Office will also discuss the school's particular situation with Resourcing, to see if it is reasonable to access funding from there. It is also appropriate for the Ministry to fund an intervention in the case of a school being in the closure process and its board having no money left to run the school.

80. EDI funding can only be advanced if the Minister has approved the closure. If this is supported, then an invoice from the school should be forwarded to ECP National Office where it will be processed. This amount will be deducted from the total EDI funds and will be noted in the EDI memorandum of agreement. The sale of chattels from the school (when it is closed) is also used to offset debt. This applies to all state and state integrated schools.

Disposal of chattels

81. The allocation of the school's resources is usually overseen by the Change Manager. They should liaise with the Residual Agent to ensure that no distribution occurs until it is known that the equipment will not be needed to be sold to cover debts and liabilities. If the school is likely to become insolvent, the Residual Agent will arrange for the chattels to be sold to cover debts. For state integrated schools, this would encompass only those assets acquired from the date of integration. Proper records of distribution should be kept and made available to the Approved Auditor. (Refer to Downloads 11 and 12 for the detailed tasks of the Residual Agent and the Change Manager).

82. It is usual practice for the schools to which the pupils will be transferring to suggest which of the resources would be useful to them. This should be agreed with the Ministry. Details of transfer or sale must be recorded in the asset register which should be retained for subsequent audit purposes.

83. Normally all assets of a state school remain the property of the state education system. Distribution of such assets as surplus books to a College of Education or kindergarten or other state institution, even if it is not within the compulsory sector, is at the discretion of the local or regional office.

84. Permission to distribute assets outside the state education system (e.g. to a private training establishment, to a public library etc.) must be given by the Secretary for Education. Once it has been decided which assets will be distributed to which schools, it is appropriate for the Change Manager to ask the Boards of those schools to uplift the resources / equipment within a set timeframe (this is usually three months from the date of closure).

School records

85. The School Records Retention – Disposal Information Pack details what is to happen to the school records in a closed school. This is available from ECP National Office and on the Ministry's external website.

Ministry's actions following closure

Guiding Principles

86. The school community may be grieving at the loss of its school. An acknowledgement that recognises the contribution the school has made over its life would be appropriate. Often such an acknowledgement can be made at a closure ceremony.

87. Soon after the date of closure (once the assets have been collected from other schools) the Change Manager should ensure that the school is tidy, empty (white boards cleaned and all resources moved) and secure.

Property

88. Unless there is an alternative educational use for the school property it is put into the disposal process. The Senior Adviser should discuss the timeline for this to happen with Property colleagues in the local / regional office. The Senior Adviser should then ensure that the appropriate processes are completed for this to happen.

89. Property will ensure that it is entered into the disposal process. Legislative and government policy requires that all surplus Crown-owned property is processed through the Public Works Act 1981. This process involves (in order) offer-back to the previous owners or their successors; referral to the Māori Protection Mechanism for an assessment of any Treaty claims on the property (in which case it may be land-banked); and finally, assuming these two steps are cleared, sale on the open market. In some cases the property can be transferred directly to a territorial local authority or another Government department if there is alternative "public work" use for the property.

90. Property Group is responsible for the ongoing security and maintenance of Crown owned buildings and land (including grass cutting) and their ultimate disposal which must be initiated as soon as practicable once the school is closed.

The role of the National Office staff

91. National Office staff work with both the local / regional office staff and the Minister's office to ensure that the closure process is followed closely and runs smoothly. ECP staff:

- Provide advice and support to regional staff throughout the whole process.
- Clear Education Report 1 through the usual processes for an Education Report and forward it to the Minister for approval.
- Alert NZEI National Office to the application for closure if it is from the Board of a primary school.
- Notify Regional / Local Office of the Minister's decision. Forward a copy of the signed report to the regional / local office and ensure that they follow up with the Board / Commissioner as soon as possible after receiving the letter that initiates consultation about the possible closure of the school.
- Work with the regional / local office staff to complete the form for the costing of the closure.
- Clear Education Report 2 (voluntary or forced) with Property, Legal, Industrial Relations, Finance, Transport, Resourcing and other relevant groups / teams (e.g. Group Māori, ECE, Pasifika Group, Regional Education National Office). Send the report through to the Minister.
- Often the Minister will want to visit a school before it closes. If this is the case, work with the regional / local office to develop the necessary paperwork for the visit.
- Notify the regional / local office of the Minister's decision when Education Report 2 is returned.

- Circulate Education Report 3 for comment to relevant groups and get it ready to go to the Minister.
 - Notify the regional office/local office of the final decision.
 - Update School Closure and EDI databases
 - Inform Payroll, Resourcing, the SNUP project, School Transport and EIA of the decision
 - Send the gazette notice to the New Zealand Gazette office for gazetting
 - Send / email a copy of approved report and gazette notice to local regional office
 - Ask the regional / local office staff to complete the PS 4 form and send it to Information Officer Shared Mailbox
 - Notify the Ministry's internal groups and external agencies of the closure and the date it will take effect (for internal groups refer to the – see list in the School Reorganisation Support Deskfile)
- External Groups:
- Chief Review Officer, Education Review Office
 - Editor, NZ Education Gazette
 - General Secretary, NZPPTA
 - National Secretary, NZETE Riri Pora
 - President, NZ School Trustees Association
 - Office of the Abdiibo General
- Process EDI invoices as they are submitted. (Refer to EDI or JSIF Payments Deskfile).

Note: Notices that are published in the NZ Gazette can be downloaded on: www.gazette.govt.nz

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Section 10 Cancelling the integration agreement of a state integrated school

Guiding principles

92. There are two steps to closing a state integrated school: cancellation of the schools' integration agreement and then closure of the school. These are two different and distinct actions with different authorities and processes.

93. Section 17 of the Private Schools Conditional Integration Act 1975 provides that an integrated school cannot be closed under section 12 solely on the ground that there is adequate accommodation for the pupils in an adjacent state school.

Cancellation of the Integration Agreement

94. There are three statutory scenarios under which an integration agreement may be cancelled. These are:

- Cancellation of the Integration Agreement by the Minister (Section 11A)

The Minister may cancel the integration agreement where (among other things) it appears on reasonable grounds that the Proprietor is not sufficiently carrying out the functions and obligations accepted by it under the PSCA or Integration Agreement.

- Cancellation of the Integration Agreement by the Proprietor (Section 11B)

The Proprietor can cancel the integration agreement if it appears on reasonable grounds that the special character of the school is jeopardised or the Minister / controlling authority is not carrying out the functions and obligations accepted by them under the PSCA or Integration Agreement.

- Cancellation of the Integration Agreement by agreement between parties (Section 11C)

The Minister and the Proprietor mutually agree to cancel the Integration Agreement.

Reasons for Cancellation

95. The implementation of the Private Schools Conditional Integration Act in practice has seen the Ministry and APIs (Association of Proprietors of Integrated Schools) developing an agreement that cancellation of the integration agreement and closure of an integrated school will be jointly undertaken with the agreement of both the Proprietor and Minister.

What happens when the Integration Agreement is cancelled?

96. The Ministry strives to treat state integrated schools in the same way as state schools. When a school's Integration Agreement is cancelled:

- the school is deemed to be a provisionally registered private school under section 35A of the Education Act 1989. As the Board of Trustees is disestablished by virtue of the cancellation of the integration agreement, the

- responsibilities of the Board of Trustees become the responsibilities of the proprietor at the moment of cancellation of integration.
- The proprietor signs a document which states that the school will not be retained as a private school, but will be closed by the Proprietor at the time of the cancellation of the integration agreement.
 - All the rights and obligations of the Minister and the proprietor under the integration agreement cease to have effect.
 - The same staffing entitlements are available as for staff in other state schools that are closing.
 - The cancellation of the integration agreement is gazetted with a date from which this will take place.
 - The same levels of EDI funding are available to support the transition of learners to their new schools.
97. In the past the view has been that if a Proprietor wishes to cancel the integration agreement and close its school, and there is a high number of redundancies, then the Proprietor would be asked to provide payment of them. The current view is that teachers in state integrated schools are to be supported by the Crown in the same way as teachers in state schools.
98. When in discussions about the possible cancellation / closure of a state integrated school, the ECP Senior Adviser managing the closure should discuss the particular situation with the Regional Financial Adviser and with Resourcing at National Office and confirm whether the Proprietor will be asked to contribute towards possible redundancy payments or that they will be covered by the Crown.
99. Some state integrated schools have been given Crown funding (a Suspensory Loan). Property Group will be able to identify if this loan is still outstanding for the particular school. If so the proprietor can either repay it at the date of closure, or transfer it to another school which the proprietor has responsibility for and is remaining open.

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Section 11: Closing a special school

100. There are a number of special schools (e.g. a residential special school) that are not closed under section 154 of the Education Act 1989. Instead, closure is effected under section 98(2) of the Education Act 1964. Under section 98(2), the Minister may disestablish a special school that has been established under section 98(1). There are only two reasons for the Minister to disestablish a special school:

1. if the Minister is dissatisfied with the manner in which the school - is being conducted; or
2. if the Minister considers that sufficient provision is made by another similarly established special school, class, clinic, or service, or by any other school or class in or reasonably near to the same locality.

101. In this latter case section 98(2) requires that the Minister gives three months' notice of his/her intention to disestablish the school if the "controlling authority" (i.e. the Board of the school so desires. However, in the former case the Board may also be required to give three months notice to staff, depending on the requirements of the various employment agreements. The date for the disestablishment to take effect should be set to take these requirements into account.

102. Section 98 does not require consultation with the Board of Trustees of the school being considered for disestablishment, or with the Boards of schools whose rolls might be affected. However, Legal Services advises that the usual processes for consultation as outlined in this deskfile should be followed in the interests of natural justice. Contact the ECP National Office to discuss the process to be used in individual cases.

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Section 12 - After the closure decisions has been made:

- Engaging a change manager
- Engaging a residual agent
- Getting the EDI memorandum of agreement signed

The Change Manager

103. The Change Manager is appointed by the Board and Ministry (jointly) to ensure that the change is well planned, managed and implemented. The Change Manager is paid for by the Ministry and the Memorandum of Agreement with him / her for services is signed by the Board and the Ministry. Refer to Download 12 for the MOA for a Change Manager. This download includes the list of tasks for the Change Manager.

104. Depending on the situation the tasks for the Change Manager may need to be modified.

The Residual Agent

105. The Residual Agent is appointed by the Board to help with its financial management prior to closure and to do the final wrap-up of its accounts after the school closure date. Residual Agents are paid by the Board (usually this is 50% of the cost before the closure date) and the Residual Agent takes his / her final pay (the other 50%) from the school's remaining operational funding as part of their final tasks. Refer to Download 11 for the MOA for the Residual Agent. This download includes the list of tasks for the Residual Agent

106. A Residual Agent can be appointed as soon after the decision to close the school has been made as appropriate. In situations where there are concerns that an accurate picture of the closing school's finances is not known, or finances / assets may be used inappropriately in the period between the announcement and the date of closure, the Residual Agent should be appointed immediately after the closure announcement.

The EDI Memorandum of Agreement

107. Education Development Initiative (EDI) funding is funding that is generated by the closure of a school (there must be one fewer schools in the schooling network to trigger EDI funding)

108. The funding is a one off payment and is used to support the closure process, to transition students to their new school(s) and to support educational achievement at those schools. There is a separate deskfile for EDI or JSIF Payments.

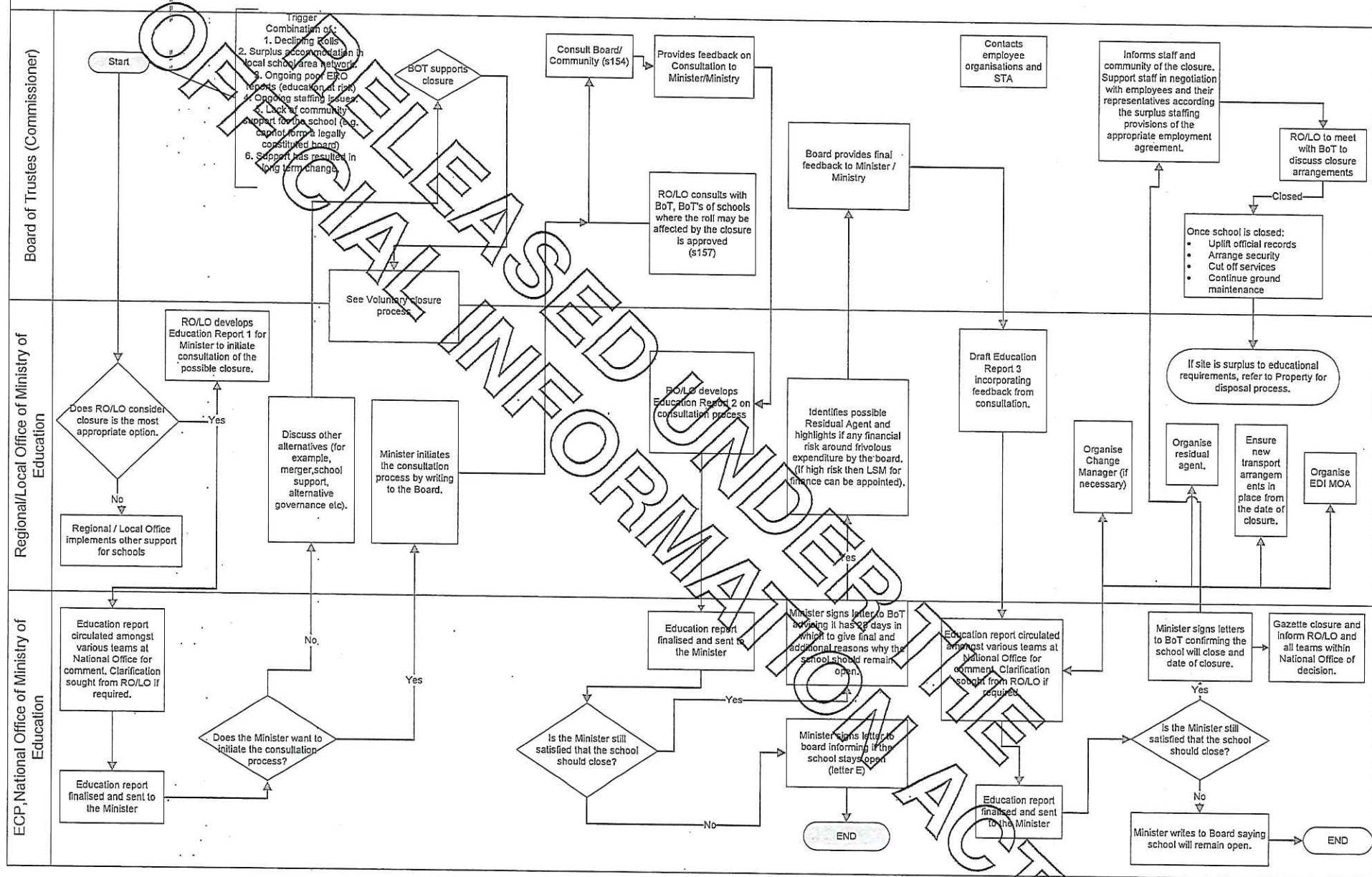
109. The deskfile includes EDI Memorandum of Agreement for the closing school (this details all aspects of the closure) and for the school(s) that are receiving students (which is a smaller document and details what EDI funding is to be spent on and how to access it).

Section 13 – List of downloads and process maps

- Download 1 - Questions for the Ministry to consider about the viability of the school (Note these can be modified if the Board wants to work through this process with the Ministry)
- Download 2 – Questions that the community are likely to raise
- Download 3 – Closure Merger Implications Sheets
- Download 4 – Education Report 1 (asking the Minister to agree to initiate consultation about possible closure under section 157)
- Download 5 – Consultation Letters (section 157)
- Download 6 – Education Report 4 – final report for voluntary closure
- Download 7 – School Reorganisation Data Form
- Download 8 - Education Report 2 forced closure – with 28 day letter
- Download 9 – Education Report after 28 day consultation – final report forced closure
- Download 10 - RS 1 Form
- Download 11 Memorandum of Agreement for a Residual Agent (including task list and model liquidation statement)
- Download 12 Memorandum of Agreement for a Change Manager (including task list)
- Download 13 Sections 154 and 157 of the Education Act 1989
 - Download 14 School Closure Forced – process and roles
 - Download 15 School Closure Voluntary – process and roles

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Process for a School Closure (directed) Relevant legislation : Section 154/157 of the Education Act 1989



Process for a school closure (voluntary)

