

NEW ZEALAND LEGISLATION SPECIAL CHARACTER OBLIGATIONS REQUIRED OF SCHOOL BOARDS OF CATHOLIC INTEGRATED SCHOOLS

THESE REQUIREMENTS ARE STATED IN:

- Schedule 6 of the Education and Training Act 2020 (previously Part 33 of the Education Act 1989, and before that Private Schools Conditional Integration Act 1975)
 - Individual Integration Agreements for each Catholic School,
 - Education Act 1989
1. The Education and Training Act 2020 (Ed. Act) including **Schedule 6** imposes Special Character compliances on School Boards of Catholic schools by virtue of the following sections.
 - 1.1. Section 12 Education and Training Act 2020: “This Act shall bind the Crown.” (The Board of Trustees is a Crown agency.)

Key point: The Act applies to the Crown, and school boards operate within that Crown agency framework.
 - 1.2. Schedule 6: Clause (CI)(1): “An integrated school (has) the right to reflect through its teaching and conduct the education with a special character provided by it.”

Key point: Integrated schools have an express statutory right to reflect their special character through teaching and conduct.
 - 1.3. Schedule 6: CI 1(2): “Integration shall not jeopardise the special character of an integrated school.”

Key point: Integration must protect, not weaken, the school’s special character.
 - 1.4. Schedule 6: CI 1(3): “The Proprietor of an integrated school shall...
 - a. Continue to have the responsibility to supervise the maintenance of the education with a special character provided by the school;
 - b. Continue to have the right to determine from time to time what is necessary to preserve and safeguard the special character of the education provided by the school and described in the integration agreement.”

Key point: The Proprietor retains responsibility and authority for safeguarding the school’s special character.
 - 1.5. Section 211, Education and Training Act 2020 states that an integrated school is subject to the same legislation as other schools in the State system but that these other enactments “shall in all respects be read subject to section 416 (see above) and section 475 of this Act (see below), and to other provisions of this Act that relate to integrated schools.”

Key point: Integrated schools are generally subject to state school legislation, but that legislation must be read subject to the special provisions for integrated schools.

- 1.6. Schedule 6: Clause 3 lists the matters which may be included in an integration agreement. These include a description of the special character; a prescription of religious instruction and observances which are to form part of the school programme; limits on the number of non-preference pupils/students; and “any other matter which bears upon the education with a special character for which the school was originally established”.

Key point: Integration agreements may include all matters needed to define and protect the education with a special character.

- 1.7. Schedule 6: Cl 13 gives the Proprietor authority to cancel the integration agreement (which would automatically remove all the powers of the Board of Trustees) “if it appears to the Proprietors that the special character of the integrated school has been or is likely to be jeopardised”. (See also The Integration Agreement at 2.0 below.)

Key point: The Proprietor may cancel integration if the school’s special character has been, or is likely to be, jeopardised.

- 1.8. Schedule 6: Cl 12 gives the Minister the power to cancel the integration agreement if it appears to her/him “on reasonable grounds that the Proprietors or controlling authority...are not sufficiently carrying out the functions and obligations accepted by them or it under this Act or the integration agreement”. (Cl 16 also empowers the Minister to disestablish and close the school for the same reasons as those stated in Cl 11.)

Key point: The Minister may intervene where the Proprietor or controlling authority is not sufficiently meeting obligations under the Act or integration agreement.

- 1.9. Schedule 6: Clause 24 (3): “The powers of control and management of the controlling authority (Board of Trustees) of an integrated school shall be exercised subject to the provisions of Schedule 6: Clause 1 and Section 211 of this Act; and to give effect to this requirement, the controlling authority of any integrated school that is a primary school or a composite school or a special school shall make provision for adequate consultation between the controlling authority and the Proprietors of that school.” This section clearly points to considerable input by the Proprietor on any and all matters which pertain, or are likely to pertain, to the Special Character.

Key point: Boards must exercise control and management consistently with the special character provisions and provide for adequate consultation with the Proprietor.

- 1.10. Schedule 6: Cl 26 gives preference of enrolment to children whose parents “have a particular or general philosophical or religious connection with an integrated school”. (See also **The Integration Agreement** at 2.0 below.)

Key point: Preference enrolment is tied to a parent’s philosophical or religious connection with the integrated school.

- 1.11. Schedule 6: CI 27: “By enrolling a pupil at an integrated school the parent shall accept as a condition of enrolment that the pupil is to participate in the general school programme that gives the school its special character.” (But see 1.14 below on CI 29 (2).)

Key point: Enrolment carries acceptance that the pupil will participate in the general school programme that gives effect to the special character.

- 1.12. Schedule 6: CI 28 states that “...the general school programme (prescribed by the Education Act) shall reflect the education with a special character provided by the integrated school, and religious and other examples may be used to reinforce teaching throughout the school day.”

Key point: The whole school programme must reflect the school’s special character, not just formal religious instruction.

- 1.13. Schedule 6: CI 29 (1) also provides for the mandatory inclusion in the school programme of those religious observances and religious instruction which form part of the education with a special character, “in accordance with the terms and conditions prescribed in the integration agreement relating to that school.”

Key point: Religious observances and instruction that form part of the special character must be included in the school programme according to the integration agreement.

- 1.14. Schedule 6: CI 29 (2) requires integrated schools to “be responsive to the sensitivities of pupils and parents of different religious or philosophical affiliations” and “not require any such pupils to participate in religious observances and religious instruction concerned with particular observances if the parents of that child state at any time that they do not wish that pupil to so participate.”

Key point: Schools must respect parental and pupil sensitivities and allow parents to opt pupils out of particular religious observances or instruction.

- 1.15. Schedule 6: Clause 38: “The school office of an integrated school may be used for the purpose of communication between the Proprietor of the school and the parents of pupils enrolled at the school, and for other purposes related to the benefit of the school and the pupils.”

Key point: The school office may be used for communications between the Proprietor and parents, and for purposes benefiting the school and pupils.

- 1.16. Schedule 6: CI 46 (2) states that when a Board of Trustees “delegates to a committee the power to appoint a teacher or to recommend the appointment of a teacher, that committee must contain at least one of the persons appointed to the (Board of Trustees) by the Proprietor.”

Key point: Proprietor-appointed board members must be included when appointment powers for teachers are delegated to a committee.

- 1.17. Schedule 6: Cl 47 requires that advertisements for the positions of Principal [Cl 47(a)], Director of Religious Studies [Cl 47(b)(ii)], and a designated number of other teaching positions [Cl 47(c) (ii)] “shall state that a willingness and ability to take part in religious instruction appropriate to that school shall be a condition of appointment”. (See also **The Integration Agreement** at 2.0 below.) Cl 47 (b) (ii) further states that the Director of Religious Studies “shall be a member of the normal staffing entitlement of the school”.
Key point: Advertisements for key special character roles must state the willingness and ability requirement for religious instruction, and the Director of Religious Studies is part of the normal staffing entitlement.
- 1.18. Schedule 6: Cl 47 (2) states that teachers appointed to Cl 47 positions (“tagged” positions) must accept the advertised requirement (the “tag”) as a condition of their appointment.
Key point: Teachers appointed to tagged positions must accept the special character requirement as a condition of appointment.
- 1.19. Schedule 6: Cl 50 is the section which authorises the special character position which is applied to the position of Deputy Principal in all Catholic schools. (See also **The Integration Agreement** at 2.0 below.) This section provides for the creation and advertising of “special positions” requiring particular capabilities on the part of the teachers holding them. It also states that acceptance of the advertised requirements is a condition of appointment.
Key point: Special character positions may be created where particular capabilities are required, and accepting those advertised requirements is a condition of appointment.
- 1.20. Schedule 6: Clause 52 requires the Board of Trustees of an integrated primary school to consult with the Proprietor before appointing a teacher to a section 464 or section 467 position. The Board must then appoint only from those applicants who are acceptable to the Proprietor “in terms of the special character of the school or in terms of the advertisement”. (See also **The Integration Agreement** at 2.0 below.)
Key point: For specified primary school appointments, the Board must consult the Proprietor and appoint only applicants acceptable in special character terms.
- 1.21. Schedule 6: Clause 53 (1) authorises the Board of Trustees to allow “any retired teacher” to undertake “voluntary tasks relating to the beliefs and instructions that are the foundation of the school’s special character.” (See also **The Integration Agreement** at 2.0 below.)
Key point: Retired teachers may undertake voluntary tasks that support the beliefs and instruction underpinning the school’s special character.
- 1.22. Schedule 6: Cl 53 (2) authorises the Proprietor to “employ any person, whether as a chaplain or otherwise” for duties relating to the religious instruction that forms part of the special character. The Proprietor is required by section 470(3) & (4) to notify the Board of the names of any person so employed, and that person “shall not be paid by the controlling authority or be in any way a charge on money appropriated by Parliament.”

Key point: The Proprietor may employ chaplains or others for religious instruction purposes, but they are not to be funded by the controlling authority or parliamentary appropriation.

- 1.23. Schedule 6: Cl 58 (2) states “Subject to clause 1 and 2, if any matter concerning State integrated schools is not dealt with by express provision in this schedule, the appropriate provisions of this Act, the Public Services Act 2020 any regulations made under any of those provisions or under any enactment repealed by this Act or the Public Services Act 2020 apply”

Key point: Where Schedule 6 does not expressly deal with a matter, the general provisions of the Act and related regulations apply, subject to the special character clauses.

2. **THE INTEGRATION AGREEMENT** is derived from Schedule 6 of the Education and Training Act 2020 (Previously Part 33 of the Education Act and prior to that the Private Schools Conditional Integration Act), with all the legal force of that Act. It is a unique legal instrument in New Zealand law. As such it imposes Special Character compliances on Boards of Trustees of Catholic schools by virtue of the following. *(Please note that clause numbers may vary from Agreement to Agreement.)*

- 2.1. Clause 2 “The School’s Special Character as is hereunder described, shall incorporate the Education with a Special Character as provided in the School and it is hereby agreed and declared that the school shall at all times be conducted and operated so as to maintain and preserve the School’s Special Character.” The clause goes on to state that the remainder of the Agreement is to be interpreted “so as to maintain and preserve the Special Character of the School.”

Key point: The integration agreement must always be interpreted to maintain and preserve the school’s special character.

- 2.2. Clause 5 “The Special Character of the School is that it is a Roman Catholic School...established by the Roman Catholic (Arch)Bishop of the (Arch)Diocese of...(established by a particular Religious Order) for the Roman Catholic community of the (Arch)Diocese of...which promotes and supports the School and of which the School is part, to provide and continue to provide Education with a Special Character, that is to say:

The School is a Roman Catholic School in which the whole School community through the general School programme and in its religious instruction and observances, exercises the right to live and teach the values of Jesus Christ. These values are as expressed in the Scriptures and in the practices, worship and doctrine of the Roman Catholic Church, as determined from time to time by the Roman Catholic (Arch)Bishop of the (Arch)Diocese of...”

Note that the definition of Special Character of Māori Boarding Schools contains the additional element of taha Māori.

Key point: The school’s special character is expressly defined as Roman Catholic and is lived through the whole school community, programme, instruction and observances.

- 2.3. Clause 3(b)(i): “At the request of the Proprietor, the Board of Trustees may grant the use of the School premises and chattels to the Proprietor or other person or persons at any time when the School premises and chattels are not required for school purposes and the Board of Trustees shall not arbitrarily withhold its consent. The Board of Trustees may require the Proprietor or other person or persons to pay a reasonable fee to the Board of Trustees as a condition of such use.” This is followed by sub-clause (ii) which allows the
- 2.4. A number of Integration Agreements have a Schedule (usually the Fifth Schedule) which outlines the special educational ethos or charism of the particular school. This is derived from the charism of the Religious Institute that founded the school or who staffed it on behalf of a Bishop.

Key point: Some integration agreements include a schedule setting out the school’s particular ethos or charism, often linked to the founding Religious Institute or Bishop. Board of Trustees, “with the consent of the Proprietor...to grant the use of the School premises and chattels to any person or persons” under the same conditions of consent and payment as those in sub-clause (i).

Key point: The Board may allow use of school premises and chattels by the Proprietor or others when not required for school purposes, subject to consent and reasonable conditions.

- 2.5. Clause 6(a) states that the Proprietor “shall continue to have the responsibility to supervise the maintenance and preservation of the Education with a Special Character provided by the School.”

Key point: The Proprietor is responsible for supervising the ongoing maintenance and preservation of the education with a special character.

- 2.6. Clause 6(b) gives the Proprietor the right to determine from time to time what is necessary to preserve and safeguard the Special Character of the Education provided by the School and described in this Deed of Agreement”.

Key point: The Proprietor decides what is necessary from time to time to preserve and safeguard the school’s special character.

- 2.7. Clause 6(c) reconfirms that the Proprietor has the power, conferred by Clause 13 (1) of the Education and Training Act 2020, to cancel the Integration Agreement if he/she considers that “the Special Character of the School...has been or is likely to be jeopardised or the Education with Special Character provided by the School...is no longer preserved and safeguarded.”

Key point: The Proprietor may cancel the integration agreement where special character is jeopardised or no longer preserved and safeguarded.

- 2.8. Clause 10(a) prohibits the Board of Trustees from enrolling more than the specified number (percentage) of non-preference pupils/students, and requires the Board to “endeavour to reasonably distribute them through the range of classes offered by the School.”

Key point: The Board must stay within the approved non-preference enrolment limit and reasonably distribute non-preference students across classes.

the Proprietor has stated that the parents have established “a particular or general religious connection with the Special Character of the School”.

Key point: Enrolment depends on the Proprietor confirming a particular or general religious connection with the school’s special character.

- 2.9. Clause 10(b) prohibits the Board of Trustees from enrolling any pupils/students unless Clause 11 states that “as religious observances and religious instruction form part of the Education with a Special Character provided by the School, religious observances and religious instruction in accordance with the determination made from time to time by the Roman Catholic (Arch)Bishop of the (Arch)diocese of...shall continue to form part of the School programme” in accordance with Clause 28 and Clause 29 of the Education and Training Act 2020.

Key point: Religious observances and religious instruction remain part of the school programme as determined by the Roman Catholic Bishop and consistent with the Act.

- 2.10. Clause 12 “The Proprietor, together with his servants, agents and licensees, shall...have at all reasonable times access to the school to ensure that the Special Character of the School is being maintained.”

Key point: The Proprietor and authorised representatives must have reasonable access to the school to ensure special character is maintained.

- 2.11. Clause 13 “The Proprietor, together with his servants, agents and licensees, shall have at all reasonable times access to the land and buildings of the School constituting the School premises sufficient to enable him to exercise the powers and carry out the responsibilities vested in him and imposed on him by Schedule 6 of the Education and Training Act 2020.”

Key point: The Proprietor must have reasonable access to land and buildings so they can exercise statutory powers and responsibilities.

- 2.12. Clauses 14-19 (or thereabouts) reiterate the provisions of Clauses 47, 48, and 50 of the Education and Training Act 2020 in respect of the appointment of the Principal, Deputy Principal, D.R.S. and other teachers in special character positions (“tagged” positions). The wording of the conditions of appointment (“tag”) for the position of Deputy Principal is different for primary and secondary schools, but in both cases it is a requirement that the prescribed wording be included in any advertisement for the position of Deputy Principal – and for that position only.

Key point: The agreement reinforces statutory requirements for appointing key special character positions, including prescribed wording for Deputy Principal advertisements.

- 2.13. Clause 20 reiterates the right of the Proprietor to arrange, with the consent of the Board of Trustees, “for any retired teacher to undertake voluntary tasks to assist the School with the teaching of appropriate Religious observances and Religious instruction...” (See Clause 53 (1) of the Education and Training Act 2020)

Key point: Retired teachers may support religious observances and instruction through voluntary tasks arranged by the Proprietor with Board consent.

- 2.14. Clause 21 reiterates the provisions of Clause 53 (2) and (3) of the Education and Training Act 2020 whereby the Proprietor and the Board of Trustees may agree to the former “employing any person as a Chaplain or otherwise” for the purposes stated in those Sections of the Act.

Key point: The Proprietor and Board may agree to the Proprietor employing chaplains or others for the purposes set out in the Act.

- 2.15. The Schedules: Most of the Schedules attached to Integration Agreements deal with property matters. One exception is referred to in 2.3 above. The other major exception is the Staffing Schedule (usually the Fourth) which accompanies every primary school Agreement. The latter specifies the number of teachers in the school who must be holding special character (“tagged”) positions (other than Principal and Director of Religious Studies), relative to the total staffing entitlement.

Key point: Schedules usually address property, but may also set out special ethos, charism, or staffing requirements for special character positions.

3. **THE EDUCATION AND TRAINING ACT 2020** also contains sections outside of Schedule 6 (State integrated schools) which apply specifically to integrated schools and which have implications, including compliance requirements, for their Boards of Trustees.
- 3.1. Section 119 (1) (e) and 120 (4) provides for “not more than 4 trustees appointed by the school’s Proprietor”.
- 3.2. Section 120 (2) and (4) authorises Proprietors to vary the number of their Appointees by reducing it to less than 4 or increasing it to not more than 4. The section provides for a Board to seek the Proprietor’s consent to any reduction. A Proprietor intending to vary the number of Appointees is required to give “written notice to the Board”. The written notice must also specify the time of the change, which can be the date on which trustees go out of office prior to Board elections, or upon the appointment of a commissioner to replace the Board (whichever is earlier), or (if the number is to be reduced) on a date specified. Where there is to be a reduction in the number of Appointees, the notice must “contain the dismissal (with effect on that day) of enough trustees appointed by the Proprietor to give effect to the reduction consented to”.
- 3.3. Schedule 1: Section 1 states “(1) It is desirable, so far as is reasonably practicable” for every Board to reflect the ethnic and socio-economic diversity of the student body; gender equality; the character of the school and the character of the community it serves; and management expertise and experience. Section 99(2) requires those responsible for co-opting or appointing members (including the Proprietor) to have regard to 99(1).
- 3.4. The Education Act 1989 Section 61 (3)(b)(iii) (in place until 2023 when the Education and Training Act comes into effect) ensures that in the long term strategic planning section of the school charter “any aims or objectives that designate the school’s special characteristics or its special character (within the meaning of this Act)” must be included.