

## Enrolment scheme provisions in New Zealand

*Norman LaRocque and Jonathan Kaye*

### Introduction

Enrolment schemes for schools have been controversial. School enrolment scheme provisions have undergone a series of changes since the Tomorrow's Schools reforms in 1989. The changes have been wide ranging but the most important changes concern who has the power to determine the content of an enrolment scheme. This power has been exercised by a range of persons and in different ways, from being prescribed by government or being determined by ballot to being determined by school Boards. To better understand the current enrolment scheme provisions it is helpful to place them in the context of the rules that have preceded them.

This paper briefly reviews developments in enrolment scheme legislation, commencing with the provisions enacted in 1989. Each change in enrolment scheme legislation is described briefly. Table 1 then summarises enrolment scheme legislation in a manner that allows easy comparison across successive pieces of legislation that have been enacted since 1989.

### Enrolment Scheme Legislation Through the Years

#### **Education Act 1964**

Under the Education Act 1964 Education Boards had the power to limit attendance at schools in order to avoid overcrowding. Limitations on attendance had to be approved by the Minister of Education and could not be used to exclude students who could not reasonably conveniently attend another school.

Enrolment schemes were centrally controlled through Education Boards and district schemes and contained geographic zones, quotas for out of zone applicants and criteria for filling a school's quota. Students were required to attend the school in their home zone unless they could obtain one of the out of zone quota places at another school.

#### **Home Zone Provisions Introduced in 1989**

The Education Act 1989 conferred on the Secretary for Education (the Secretary) wider powers to limit attendance. The 1989 provisions came into effect on 1 October 1989 and were similar in many respects to the current home zone rules. However, they were a considerable departure from the previous rules because students were free to attend any school they could obtain a

place at. Key elements of the 1989 provisions were as follows:

- the Secretary had the power to prescribe maximum rolls for secondary schools and to establish an enrolment scheme for every school that seemed likely to exceed its maximum roll;
- each enrolment scheme defined a home zone for the school, specified a maximum number of out of zone enrolments and contained rules for pre-enrolment and enrolment procedures;
- students living within the home zone had an absolute right to enrol at the school; and
- if there were more applicants than places available, applicants who applied for enrolment before 1 August of the previous year were selected by lot, and if there were still places left after the conduct of the lot, applicants were selected on the basis of the order in which their applications were received.

#### ***Enrolment Scheme Provisions under the Education Amendment Act 1991***

The 1991 amendments were in force from 20 June 1991 until 18 December 1998. The principal effect of the 1991 amendments was to shift the powers in relation to enrolment schemes from the Secretary to school Boards. As long as the enrolment scheme complied with the basic requirements set out below Boards had considerable discretion to determine the content and effect of their enrolment schemes. Home zones were not defined in legislation and could be determined by school Boards. Key elements of the 1991 provisions were as follows:

- a school Board could only establish an enrolment scheme if the Secretary was satisfied that there was likely to be overcrowding at the school;
- an enrolment scheme could only be established for the purpose of avoiding overcrowding at the school, and the scheme could not have the effect of excluding from the school any

more prospective students than was necessary to avoid overcrowding;

- there were various provisions relating to the notification of the adoption of an enrolment scheme, the availability of the pre-enrolment procedures for the scheme and the scheme itself; and
- school Boards had the power to amend schemes and were required to consider annually whether the scheme was still required to avoid overcrowding.

#### ***1998 Enrolment Scheme Provisions***

The amendments passed in 1998 were in force from 19 December 1998 to 7 July 2000. They added a number of requirements for school Boards to comply with when developing enrolment schemes. However, they did not change any of the fundamental aspects of the 1991 enrolment scheme rules. The 1998 provisions required that:

- schools' enrolment schemes have regard to the capacity of the existing network of schools;
- school Boards consult with the local community during the development of an enrolment scheme; and
- the Secretary approve enrolment schemes.

Under the new provisions, school Boards were required to ensure that their enrolment schemes reflected the desirability of students being able to attend a reasonably convenient school. These new provisions also enabled the Secretary to make reasonable use of the existing network of schools by taking into account the location and capacity of other schools that were reasonably convenient for students in the general area.

The legislation included a definition of "reasonably convenient school". Under this definition, Boards were required to take into account a number of matters, including:

- distance;
- time likely to be spent in travel;
- reasonably available modes of travel;

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- common public transport routes;
- relevant traffic hazards; and
- the age of the student.

School Boards were also required to take all reasonable steps to discover and consider the views of the parents of students at the school, the community in the general area served by the school and the school Boards of other schools that could be affected by the proposed enrolment scheme. A power was conferred on the Secretary to issue guidelines to assist school Boards in the development and implementation of enrolment schemes.

During the passage of these amendments there was considerable concern expressed at the select committee hearings that enrolment schemes were being used as a screening device to keep out students considered undesirable and to enrol students considered to be superior in some way. Many of the submitters argued for an absolute right to be conferred on students to attend the school nearest their home.

The Select Committee rejected these submissions on the basis that school Boards would not be able to discriminate unlawfully against particular students (because of the provisions of the Human Rights Act 1993), and that the powers of the Secretary to approve enrolment schemes would ensure that school Boards followed a fair procedure in developing schemes and in implementing their schemes. The Secretary would also issue guidelines to assist school Boards with their responsibilities.

#### **Home Zone Provisions 2000**

The home zone provisions in the Education Amendment Act 2000 came into force on 8 July 2000 and are still in force. They effected a fundamental change in the enrolment scheme

rules by removing much of the discretion of school Boards to determine the content of their enrolment schemes. The 2000 amendments also changed the trigger mechanism so that a school board can only develop an enrolment scheme if it receives a notice to that effect from the Secretary.

Key elements of the provisions introduced in 2000 are:

- the new rules established the absolute right of students to attend their local school;
- enrolment schemes must now specify a geographical home zone. All students living within that home zone have an absolute right of enrolment at the school in that home zone;
- school Boards must consult with their local communities in the development of enrolment schemes;
- the Secretary must approve a school's enrolment scheme;
- where schools are adjacent to each other and both have enrolment schemes, the geographical home zones of each school must be contiguous so that no students are left in a gap between home zones;
- selection of students from outside a home zone must be undertaken in accordance with the provisions of the Act. Applicants are accepted in the following order: applicants for special programmes at the school, applicants who are siblings of a current student at the school, applicants who are siblings of a former student of the school, applicants who are a child of an employee of the Board and, finally, all other applicants; and
- if there are more applicants in any of these groups than there are places available the remaining places are balloted in accordance with a process specified by the Secretary.

The powers of the Secretary to issue instructions to schools were widened to include the power to issue instructions on:

- the procedures for ballots;
- the dates for ballots to be held;
- the establishment and maintenance of waiting lists;
- the information to be given to applicants outside a school home zone; and
- any other matters the Secretary considers necessary.

Schools must comply with these instructions. The Secretary may only approve a proposed enrolment scheme if it complies with all of the provisions of the Act and all of the procedures in the Act have been properly followed by a school Board when establishing an enrolment scheme.

New provisions were added providing for a school board to annul the enrolment of a student if it believes, on reasonable grounds, that a student's enrolment form falsely claimed that:

- the student was living in the school home zone; or
- the student was entitled to a particular priority in the ballot for out of zone places.

An annulment of enrolment takes effect at the end of the school year. The Secretary has an overriding power to direct the enrolment of a student where that enrolment has been annulled by a school Board.

#### **Updated Home Zone Provisions 2001**

A number of minor amendments were effected to the home zone provisions in 2001. Broadly, these amendments strengthened schools' ability to address issues of "false" enrolments. These amendments came into effect on 25 October 2001. Key provisions of the 2001 changes are:

- school Boards can review an enrolment if they believed, on reasonable grounds, that a student used a temporary residence within

the school home zone for the purpose for gaining enrolment. If the review confirms that a student used a temporary address for the purpose of gaining enrolment, a school Board may annul the enrolment of the student;

- a student can be removed from the school within one month, rather than waiting until the end of the school year;
- powers were added for schools to enrol students excluded from another school so long as the Ministry endorses the enrolment; and
- school Boards were given the power to make minor amendments to an enrolment scheme without requiring notification.

## **Conclusion**

Enrolment schemes have generally been subject to significant centralised control with the power to determine the content of enrolment schemes being held by the Ministry of Education or being specified in legislation. However, the period from 1991-2000 is an exception as school Boards were given considerable discretion to determine the content and effect of their enrolment schemes. The changes implemented in the year 2000 represent a return to centralised control of enrolment schemes and provide little individual discretion to school Boards to determine the nature and effect of their enrolment schemes. With much of the detail of enrolment schemes being specified in the provisions of the Education Act 1989 or lying within the direct control of the Ministry of Education there is little scope for enrolment schemes to be adjusted to reflect local circumstances.

Norman LaRocque is a Policy Advisor with the New Zealand Business Roundtable (nlarocque@nzbr.org.nz) and an adviser to the Education Forum. Jonathan Kaye is a Principal with Ernst & Young Law (jonathan.kaye@nz.eyi.com).

## Enrolment Schemes under the Education Act 1989: 1989 to 2001

	Home Zone Regime 1989 – 1991	Enrolment Scheme Regime 1991 – 1998	Enrolment Scheme Regime 1998 – 2000	Home Zone Regime 2000 – 2001	Home Zone Regime 2001 – current
<b>Legislative Authority/ Amending Act</b>	<ul style="list-style-type: none"> <li>Education Act 1989, No.80</li> </ul>	<ul style="list-style-type: none"> <li>Education Amendment Act 1991, No.43</li> </ul>	<ul style="list-style-type: none"> <li>Education Amendment Act (No.2) 1998, No.118</li> </ul>	<ul style="list-style-type: none"> <li>Education Amendment Act 2000, No.21</li> </ul>	<ul style="list-style-type: none"> <li>Education Standards Act 2001, No.88</li> </ul>
<b>When were the rules in effect?</b>	<ul style="list-style-type: none"> <li>Took effect on 1 October 1989</li> </ul>	<ul style="list-style-type: none"> <li>In effect 20/6/91 – 18/12/98</li> </ul>	<ul style="list-style-type: none"> <li>In effect 19/12/98 – 7/7/2000</li> </ul>	<ul style="list-style-type: none"> <li>In effect 8/7/2000 – 24/10/01</li> </ul>	<ul style="list-style-type: none"> <li>In effect 25/10/01 – current</li> </ul>
<b>Who determines the process for preparing an enrolment scheme?</b>	<ul style="list-style-type: none"> <li>Secretary</li> </ul>	<ul style="list-style-type: none"> <li>School board</li> </ul>	<ul style="list-style-type: none"> <li>School board.</li> <li>However, Secretary issues Guidelines for Boards and statutory requirement on Boards to consult with parents, community</li> </ul>	<ul style="list-style-type: none"> <li>Combination of statutory requirements and Secretary through instructions and guidelines to Boards</li> </ul>	<ul style="list-style-type: none"> <li>Combination of statutory requirements and Secretary through instructions and guidelines to Boards</li> </ul>
<b>Who decides content of enrolment scheme?</b>	<ul style="list-style-type: none"> <li>Specified in Act</li> </ul>	<ul style="list-style-type: none"> <li>School board</li> </ul>	<ul style="list-style-type: none"> <li>School board</li> </ul>	<ul style="list-style-type: none"> <li>Specified in Act</li> </ul>	<ul style="list-style-type: none"> <li>Specified in Act</li> </ul>
<b>Who approves enrolment scheme?</b>	<ul style="list-style-type: none"> <li>Secretary</li> </ul>	<ul style="list-style-type: none"> <li>School board.</li> <li>But, Secretary must provide written notice to Board that there is likely to be overcrowding unless scheme put in place</li> </ul>	<ul style="list-style-type: none"> <li>School board. But, Secretary must also approve the scheme</li> </ul>	<ul style="list-style-type: none"> <li>Secretary approves a scheme and a school board must then also approve the scheme.</li> <li>Secretary may also direct a school board to amend a scheme and then also approve the scheme</li> </ul>	<ul style="list-style-type: none"> <li>Secretary approves a scheme and a school board must then also approve the scheme.</li> <li>Secretary may also direct a school board to amend a scheme and then also approve the scheme</li> </ul>
<b>Effect of enrolment scheme?</b>	<ul style="list-style-type: none"> <li>Students living in the home zone have an absolute right to attend their local school.</li> <li>Other applicants balloted</li> </ul>	<ul style="list-style-type: none"> <li>Person may be denied enrolment if denied in accordance with enrolment scheme</li> </ul>	<ul style="list-style-type: none"> <li>Person may be denied enrolment if denied in accordance with enrolment scheme</li> </ul>	<ul style="list-style-type: none"> <li>Students living in the home zone have absolute right to attend local school.</li> <li>Other applicants selected according to priorities specified in Act and remainder balloted</li> </ul>	<ul style="list-style-type: none"> <li>Students living in the home zone have an absolute right to attend their local school.</li> <li>Other applicants selected according to priorities specified in Act and remainder balloted</li> </ul>
<b>Penalties if parents/children supply false information with application?</b>				<ul style="list-style-type: none"> <li>Enrolment may be annulled if based on false information.</li> <li>Annulment takes effect at end of year</li> </ul>	<ul style="list-style-type: none"> <li>Enrolment may be annulled if based on false information. Annulment takes effect within 1 month.</li> <li>School boards have power to review students' home zone eligibility</li> </ul>