

Infectious diseases in early learning services and schools – A guide to legal powers

The majority of non-immune students and staff exposed to an infectious disease remain in quarantine when directed to do so. However, in some instances, parents or staff may challenge the request. In these events, it is important to understand the legislation that can be invoked to ensure the public health and welfare of the school and early learning service community.

Precluding from educational institutions

Individuals may be precluded based on either The Education Act 1989 and/or The Health Act 1956.

Section 19 of the **Education Act 1989** allows the principal of a state school to preclude students if they believe on reasonable grounds that these students may have a communicable disease. This section does not cover early learning services or private schools.

This section only applies to the person (case) believed to have the disease, not those who are considered a close contact, such as those who have not been immunised and have been exposed to the case.

A close contact is someone who has been in direct contact with or shared the same space as someone with an infectious disease. Depending on the disease, this includes being in the same classroom or touching infected surfaces.

The Health Act 1956 covers all schools, early learning services and tertiary institutes. It empowers a Medical Officer of Health to issue a direction either to:

1. The head of an educational institution to exclude students or staff as they may be infectious,
2. An individual (or their parents) requiring a named person to stay in isolation or quarantine as they may be infectious.

Requiring staff or children to stay away

	Case – a person with suspected or confirmed disease	Close contact – has been exposed to the disease
Student or child	The Principal of a <u>state school</u> can preclude a student who they believe on reasonable grounds may have a communicable disease (Section 19 Education Act). The student has to stay away for the infectious period of the specific disease.	A Medical Officer of Health can direct parents of any student/child that they need to stay home if they are not immune and may be developing the disease and pose a public health risk.

	<p>The principal must inform the Medical Officer of Health, the student’s parents and the School Board that they have done so.</p> <p>A Medical Officer of Health can direct the parents of <u>any</u> student or child at <u>any</u> educational institution with a suspected or confirmed communicable disease and who poses a public health risk to keep their children home for the infectious period of the specified disease.</p>	<p>The quarantine period is determined by the specific disease- see chart</p>
Staff member	<p>A Medical Officer of Health can direct a staff member at any educational institution with a suspected or confirmed communicable disease and who poses a public health risk to stay home for the infectious period of the specified disease.</p>	<p>A Medical Officer of Health can direct a staff member that they need to stay home if they are not immune and may be at risk of developing the disease and pose a public health risk. The quarantine period is determined by the specific disease- see chart</p>

Q and As

Q - I am a school principal, what power do I have to send children home if they are suspected of having an infectious disease – like mumps or measles?

None if the student is only suspected of having an infectious disease without something more. However a principal of a state school has the power under Section 19 of the Education Act to preclude a student on a reasonable belief the student may have a communicable disease ([as defined by the Health Act](#)).

After taking this action, the principal must inform the student’s parents, the Board of Trustees, and the Medical Officer of Health.

I run a private school or early learning service – does Section 19 of the Education Act apply?

No, this section of the Education Act does not apply to private educational facilities, only to state schools specifically. You can request that a student or staff member with an infectious disease does not attend, and if they don’t comply, ask the Medical Officer of Health at Auckland Regional Public Health Service for support, which could include a direction under the Health Act.

Can I require a staff member with suspected measles to stay away?

The Board of Trustees and an early learning service provider should ask a staff member to stay home if they are suspected of having a communicable disease. If a staff member does not want to stay in isolation, they can be directed to do so by a Medical Officer of Health.

Can a school preclude close contacts of the person suspected of having an infectious disease?

No, however a Medical Officer of Health has powers to direct close contacts who pose a public health risk under the Health Act, to remain home.

An infectious disease is one listed in [Schedule 1 of the Health Act](#).

Do I have to wait until the disease is confirmed?

No - a school principal is able to preclude a student on having reasonable grounds to believe they may have a communicable disease. See further below for information for early learning services.

The Medical Officer of Health will let you know when a case is confirmed, the infectious period and quarantine dates.

What do I do if I'm challenged by parents on this? Or if an excluded child or staff member turns up at school?

Please seek advice from the Ministry of Education on what actions you may take under this legislation. You will also be able to seek support from Auckland Regional Public Health Service.

Any close contact who is not immune and has been exposed can be directed to go home and stay there by the Medical Officer of Health. If a potentially infectious or infectious student turns up at school or at your early learning service, breaking quarantine instructions, then you will need to isolate them if possible, and contact the Medical Officer of Health. A direction to the head of an educational institution under the Health Act is not common, and is done with prior consultation with the head/principal.

The Medical Officer of Health will consider issuing a direction to an individual to stay in quarantine (or to a parent to keep their child at home) if the disease they were exposed to is highly contagious like measles and if there is substantial risk of transmission to others.

The Medical Officer of Health can also issue a direction for the whole school or early learning service requiring non-immune exposed contacts to be excluded until the end of a quarantine period (usually 1-2 weeks) because they are highly likely to become unwell.

If someone fails to comply with a direction from a Medical Officer of Health, then they commit an offence. They may be liable to be convicted before a District Court Judge and ordered to pay a fine not exceeding \$1000.

What about excluding students just because they are not vaccinated?

If there has not been a case of infectious disease at your school or early learning centre, even if the disease is circulating in your community, students can NOT be excluded just because they are not vaccinated. Students cannot be precluded unless there is reasonable grounds to believe they may have a communicable disease (Education Act) or are at risk and directed by the Medical Officer of Health (Health Act) because they have been exposed to a disease through contact or transmission through air.

Should the school or early learning service declare an outbreak?

An education provider should act immediately if it has one suspected case of an infectious disease. An outbreak does not need to be declared. Contact Auckland Regional Public Health Service for advice.

Can the school be closed?

Section 92L of the Health Act authorises the Medical Officer of Health to direct the head of the school to close all or part of the institution to effectively manage the public health risk (eg, if there is a large number of non-immune children who should be in quarantine). This is only where a direction to individual students or teachers will be ineffective.

I manage an early learning service, and we have babies under 12 months. Can I exclude non-immune children even though they might not have been in close contact?

As most early learning services have shared spaces for babies and older children like lunchrooms and toilets, the Medical Officer of Health would support exclusion of any non-immune children who may have been exposed and be contagious.

However if a family does not comply with your request to keep their child or children in quarantine, you would have to contact a Medical Officer of Health to either approach the family or issue a direction to the parents.

I manage an early learning service. How I should I respond to cases of infectious diseases affecting children or staff?

Regulation 46(1)(b) of the Education (Early Childhood Services) Regulations 2008 requires all licensed early learning services to take all reasonable precautions to prevent the spread of infection among children enrolled in the service.

For centre-based early learning services, criterion [HS26 of the licensing criteria](#) requires all practicable steps to be taken to ensure that children do not come into contact with any person (adult or child) on the premises who is suffering from a disease or condition likely to be passed onto children and likely to have a detrimental effect on them. There are specific actions to be taken for different diseases. These are set out in [Appendix 2 of the licensing criteria](#).

Further guidance is provided on the Ministry of Education website - <http://education.govt.nz/early-childhood/licensing-and-regulations/the-regulatory-framework-for-ece/licensing-criteria/centre-based-ece-services/health-and-safety/>

For home-based early learning services, criterion [HS23 of the licensing criteria](#) states that out-of-school care must not be provided to children who are absent from school due to illness.

Further guidance is provide on the Ministry of Education website - <http://education.govt.nz/early-childhood/licensing-and-regulations/the-regulatory-framework-for-ece/licensing-criteria/home-based-ece-services/health-and-safety-practices/>

Early Learning Services should also consult with Auckland Regional Public Health Service for advice and support.