

Agency Roles and Responsibilities

The Education Review Office and the Ministry of Education (the Ministry) have complementary roles in ensuring that quality education and care is provided to children.

The Ministry has responsibility for licensing services and enforcing compliance with regulated standards. The Ministry has the statutory powers, or legal authority, to intervene when services are identified as being in breach of regulated standards, including issuing written directions, changing the licence status to provisional and imposing conditions for improvement. The Ministry also has authority to suspend a service's licence if any non-compliance pose significant risk to the safety and wellbeing of children, or cancel a licence where non-compliance is not remedied.

The function of the Chief Review Officer of the Education Review Office (ERO) is to administer reviews either general or relating to particular matters of the performance of all New Zealand schools and licensed early childhood services as set out in section [463](#) of the Education and Training Act 2020.

When non-compliance is identified in ERO reviews and evaluations

The Ministry and ERO work together when ERO reports non-compliance or compliance related concerns with regulatory standards¹ and associated licensing criteria. This also applies to early childhood services that belong to a governing organisation.

Kaupapa Māori provision is much broader and requires a variation to the evaluation approach. ERO works directly with peak bodies, district offices or licensed service managers, when reports identify issues of non-compliance with regulatory standards and related licensing criteria. Support systems are put in place to assist these services. ERO also reports directly to the Ministry where serious breaches of the regulatory standards have been identified.

Akanuku | Assurance Reviews

ERO's review results in a judgement of whether a service is either 'meeting' or 'not meeting' each of the regulatory standards and related licensing criteria. ERO reports these judgements as well as information about all/any non-compliance identified. An ERO Assurance Review report will include the statement below:

- ERO recommends the Ministry follow up with the service provider to ensure that non-compliances identified in the report are addressed promptly.

¹ Referred in Part 2 of the [Education \(Early Childhood Services\) Regulations 2008](#) (the Regulations)

In some instances, ERO may judge non-compliance to be an **immediate health and safety risk** to children at a service while a review is being undertaken.

Immediate Health and Safety Risk

An immediate health and safety risk referred in regulation 54A of the Regulations is considered to be one that warrants instant action because of its potential and significant impact for children's health, safety and wellbeing, and is, or is likely to be a breach of the regulations, for example:

- Regulation 56 III-Treatment of Children eg staff shouting at or hitting children was witnessed while a review team was on site or following an allegation that a staff member was ill-treating a child and was not excluded from coming into contact with children pending investigation.
- Any risk that cannot be immediately mitigated eg widespread lack of or serious concerns with safety checking (if a service cannot continue to operate if teachers are excluded from coming in to contact with children), insufficient required staff to meet ratios, no person responsible.
- Physical hazards that pose a high risk to the safety of children and cannot be immediately mitigated eg exposed electrical wiring, a broken fence, gate or door that cannot restrict access.

When ERO judge non-compliance to pose an immediate risk to children, ERO discusses the immediate health and safety risk/s with the service, provides a written record of these findings to the service provider while onsite and advises the Ministry with urgency of the non-compliance/s. The Ministry will contact the service on the same day as the information is received and carry out a risk assessment to ensure the risk is mitigated.

Unacceptable Health and Safety Risk

Unacceptable health and safety risk relates to non-compliance that has a high and ongoing potential impact and risk to children. Consideration will be given to the scale and context of the identified non-compliance.

As a guide, the following areas are considered by ERO in making a judgement about unacceptable risk:

- Emotional safety (including positive guidance and child protection)
- Physical safety (including supervision; sleep procedures; accidents; medication; excursion policies and procedures)
- Suitable staffing (safety checking of staff; ratios)
- Relevant evacuation procedures and practices.

These items are outlined in ERO's Akarangi | Quality Evaluation reports.

In making a judgement on whether non-compliance poses an immediate or unacceptable risk, consideration is given to whether the non-compliance can be mitigated while the service can continue to operate. For example:

- No evidence of a risk assessment for one of ten staff members would be unacceptable risk if the service can continue to operate, while the staff member is stood aside and the service meets the staffing ratio requirements.
- If there is no evidence of adequate risk assessments being undertaken for a number of staff members, this would be immediate risk if the service cannot operate without those staff members.



For ERO evaluations that identify either immediate and/or unacceptable risk, the Ministry will undertake a licence assessment.

Please note: These protocols will be updated from time to time in response to changes in legislation and ERO internal review processes that may result in changes to our approaches and associated practice. ERO notifies these changes on our website, through sector newsletters and ERO's external stakeholder group meetings.

