



# Report: School attendance – Options for removing walking distance and principal exemptions

To:	Hon David Seymour, Associate Minister of Education		
Cc:	Hon Erica Stanford, Minister of Education		
Date:	17/07/2025	Deadline:	18/07/2025
Security Level:	In-Confidence	Priority:	High
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## Why are we sending this to you?

This report responds to your request for options to remove sections 44 and 45 from the Education and Training Act (2020).

## What action do we need, by when?

We recommend that you return a signed copy of this paper, or your feedback on the proposed options, by Friday 18 July 2025.

## Key facts, issues and questions

For this report, an exemption means that students are exempted from section 36 of the Act which requires a student to attend the school they are enrolled at whenever it is open.

This report:

- provides advice on removing sections 45 and 44 from the Act;
- details the implications and risks associated with removing these sections;
- outlines external advice received from the Ministry's Attendance Expert Advisory Group, the Legislation Design and Advisory Committee, and Rare Disorders NZ; and
- seeks your direction on how the Ministry responds to absence moving forward.

## Alignment with Government priorities

1. The purpose of this work is to increase student attendance. This review aligns with the Government's target to increase regular attendance rates so that 80% of students are present for more than 90% of the term by 2030.

## Background

2. You have established the Attendance Action Plan that has a multi-faceted approach to reducing the rates of non-attendance in the schooling system, with the aim of returning students back into regular attendance.
3. Sections 44 and 45 of the Education and Training Act (the Act) relate to exemptions from the requirement to attend school based on walking distance from the school or some other reason (section 44) and a principal's current ability to exempt a student from attendance for no more than 5 days (section 45).
4. The five-day exemption was originally intended to be used in exceptional situations where there was not an existing exemption. As the legislation has been replaced and amended, the specific exemptions have been removed, and section 45 has become a catch-all for all exemptions to attendance. As the number of situations section 45 applies to has broadened, so has the use of principal's discretion.
5. The 'walking distance' exemption has existed in one form or another since the Education Act 1877. It is now rarely used and does not reflect the modern education context where transport options are more varied and where students in remote areas have access to distance learning through Te Aho o Te Kura Pounamu (Te Kura). Section 44 also allows the Secretary to exempt students from attendance for 'some other reason' for up to 7 days. This is by parent application and has rarely been used.
6. You have previously received a series of papers from the Ministry relating to exemptions that have included sections 44 and 45. Following this advice, you agreed to remove section 44 and tighten section 45 (METIS 1337130 refers).
7. A subsequent report responded to your request for advice on how to implement a revised system for approaching absence (METIS 1341284 refers). Following your feedback on this paper, we have been working with your office to clarify the problem definition for the next piece of work and what could be achieved within legislative timelines to support this.
8. Following your discussion with officials on Monday 7 July 2025 you requested advice on repealing section 44 in full and repealing section 45 in full. We have provided this information below, with a detailed outline of risks and implications associated with removing these sections, comments from the Ministry's Attendance Expert Advisory Group, and a section outlining two options for how absences are responded to moving forward. Detailed analysis of removing section 44 and 45 (against the criteria of effectiveness, cost, and flexibility) is provided in Annex 1.
9. The estimated timeline for progressing changes relating to section 44 and 45 through Cabinet is outlined in the table below:

Deliverable	Estimated date
Draft policy options Cabinet paper and RIS to MO	TBC
Concurrent departmental and Ministerial consultation	Pref. 28 July – 1 August
Cabinet paper and RIS lodged	7 August 2025
Social Outcomes Committee	13 August 2025
Cabinet	18 August 2025
Drafting instructions issued to Parliamentary Counsel Office	19 August 2025

## Schools and parents are legally required to ensure that students attend school

10. Section 36 of the Act requires students of compulsory schooling age<sup>1</sup> to attend school whenever it is open and places an obligation on school boards to take all reasonable steps to ensure students attend. Section 244 of the Act provides that parents commit an offence if their child, while enrolled at a registered school, does not attend in accordance with section 36. Section 45 of the Act gives principals the ability to exempt students from these attendance requirements for a period of no more than 5 days if the principal thinks the reason for absence is justified.

### Section 45 gives principals unlimited discretion to exempt a student from attendance for no more than 5 school days

You have indicated your preference for removing section 45 from the Act, with Attendance Management Plans (AMPs) and the Stepped Attendance Response (STAR) guiding responses to absence

11. Repealing section 45 would result in principals no longer being able to exempt any absence. Parents and students would receive a strong message that students must attend school whenever it is open or potentially face legal sanction. Principals would no longer consider whether an absence was justified when deciding how to respond.
12. This will mean that schools become reliant on the AMPs and the thresholds of absence within these to guide responses to absence. Once these are embedded in all schools, we should see more consistent responses to absence compared to what section 45 currently allows. The use of justified absences in the current system can mask underlying patterns of absence. Using justified absences may also mask barriers to attendance that could otherwise be resolved.
13. By removing section 45, any absence will technically see parents commit an offence as every time a child is absent from school they would be breaking the law. This would include situations where attendance is impossible, unreasonable or not in the child's best interests. For example, when a student is seriously ill or injured, has suffered a bereavement, or their access to school is blocked due to extreme weather. Further information on this is provided in the risks and implications section below.

### Section 44 enables exemption from attendance based on walking distance from a school or 'any other reason'

14. Section 44 enables the Secretary for Education (the Secretary) to exempt a student (partially or entirely) from attending school if the walking distance between the student's residence and school exceeds a certain distance [METIS 1337130 refers]. As noted above, the 'walking distance' exemption is now rarely used and does not reflect the modern education context.
15. Alongside the exemptions for walking distance, section 44 also enables the Secretary to exempt students from school attendance if the Secretary is satisfied that it is "sensible to exempt the student for some other reason" (s44(1)(c)). The exemption can be for no more than seven days. Like the walking distance exemption, it has rarely been used.

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<sup>1</sup> Section 36 only applies to students aged 6 up until their 16th birthday, and students aged five years if they are enrolled at a registered school. Students aged 16 or over are not legally required to attend (but have a right to do so until 1 January following their 19th birthday). Children with learning support needs who have Ongoing Resourcing Scheme funding can remain at school until the end of the year in which they turn 21.

16. It appears that section 44(1)(c) and section 45 were designed to provide a dual tiered approach to exempting attendance, which has a higher level of scrutiny for longer absences. For example, if a student is still unable to attend school following the five-day exemption enabled by section 45, then a parent could apply to the Secretary for an additional and renewable exemption of no more than 7 days under section 44(1)(c).

**You have previously agreed to the removal of section 44 from the Act and have requested advice on proceeding with this**

17. Given that this section is now rarely used, its removal alone is sensible and unlikely to have an impact. However, alongside the removal of section 45 in full, the removal of section 44 would mean that there would be no exemption pathway for students for absence or walking distance, regardless of the reason for absence. The Secretary's ability to exempt in certain cases (s44(1)(c)) is a useful backstop to have in the system and wholesale removal may be premature, especially if section 45 is also removed.

18. We have assessed that any potential impact on demand for school transport due to section 44 being removed will be low. This is because the numbers of walking exemptions issued have been very low and the last known exemption was issued in 2021 for one year.

*The repeal of section 44 will also necessitate the repeal of section 46*

19. Section 46 enables the Secretary to require the enrolment of children either subject to an exemption under section 44 or who have been excluded from school at a distance school. Section 46 refers:

*The Secretary may, by notice in writing, require the parent of a student who holds an exemption certificate issued under section 44 or who has been directed under section 82(1) (refers to the Secretary's powers for excluded students aged under 16 years and the ability to direct them to return to a school including enrolling at a distance school) to enrol the student at a distance school.*

20. Section 82(1) already contains a standalone power for the Secretary to direct enrolment at a distance school, so if section 44 is repealed then there is no further need for section 46. While section 46 refers to enrolment and is technically out of scope of attendance, we recommend its repeal alongside section 44 as it will be redundant because of the proposed changes.

**There are implications associated with removing section 44 and section 45 from the Act in full**

**Legal implications**

21. As noted above, removal of both sections 44 and 45 will mean there is no exemption pathway for any absence, regardless of reason. Removal of a principal's ability to exempt an absence will likely create confusion, at least initially, about the illegality of non-attendance and what this means for parents and students. This option would require an acceptance and tolerance of any absence from school being illegal, as there will no longer be any way to exempt any form of absence. This would also be a departure from the principle that a criminal offence should be clear about which conduct is intended to be prohibited.<sup>2</sup>

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<sup>2</sup> Page 123 of the Legislation Advisory and Design Committee guidelines, [The Legislation Design and Advisory Committee](#)

22. This would conflict with existing laws<sup>3</sup> and the policy objectives of the Act.<sup>4</sup> This creates the potential to decrease the certainty and reasonableness of the law as every absence would be illegal. As a result, it would become uncertain when prosecution would be enforced.

*You have asked whether changes can be made to section 244, regarding prosecutions*

23. Any amendments to when charges may or may not be laid would be a shift from the current constitutional system where prosecutors must act independently when making prosecutorial decisions. The requirements around prosecution are governed by the Criminal Procedure Act 2011 and the Solicitor-General's Prosecution Guidelines. Any changes to New Zealand's prosecution system would first require discussion with the Attorney-General and Ministry of Justice as administrator of the Criminal Procedure Act.

24. A more appropriate way to mitigate the impact of creating concern about widespread prosecutions would be to introduce an alternative mechanism for specifying when an absence is acceptable, via a regulatory instrument or a constrained discretion for school principals.

### **Implications for Ministry and school processes**

25. Removing section 45 would also likely have operational and fiscal impacts on the Ministry's work on attendance prosecutions (see METIS 1324793 and 1341217). This is because the method for initiating the prosecutions process requires investigation and selection of candidates to be considered for prosecution from all absences rather than filtering using absences currently marked as unjustified.

26. In effect, to manage prosecutions within its resources (or even significantly increased resources) the Ministry would need to introduce a system for determining which absences to prosecute that replicate the concept of a justified or acceptable reason for absence.

27. It is challenging to know what impact making changes to section 45 may have as our data collections do not provide information on the use of the exemption aside from noting justified absences. This means that we do not know on what basis principals are accepting absence as justified. Principals, and parents, are likely to react to any changes that may reduce the 5-day exemption in section 45 unfavourably. This is because they will use this exemption to meet a wide range of absences, some of which will be very contextual to individual circumstances.

### **Implications for students and families, and their attitudes towards attendance**

28. We understand the primary rationale for removing section 45 entirely is to change the public attitude towards absence by removing the concept that an absence can be justified; and to change the attitude of schools so that all reasons for absence (including illness) merit a response rather than being written off.

29. Along with this broad effect, the change would also create a de facto criminalisation of almost all parents. The majority are unlikely to be concerned about the threat of prosecution and fines for sickness absence, while they might take this threat more seriously when they are taking their children out of school for reasons which are clearly not valid.

30. However, there is also a smaller group of parents where their children face significant barriers to attendance, such as chronic illness, disabilities or serious injuries. While the school system can work with parents to mitigate these problems, in practice for some parents and families their children will nevertheless fall into high thresholds of absence for significant periods.

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<sup>3</sup> For example, section 152 of the Crimes Act 1961. Duty of parent or guardian to provide necessities, includes an obligation to provide for health needs, including medical care.

<sup>4</sup> For example, section 32(b) of the Education and Training Act 2020 provides that the purpose of that part of the Act is to establish a schooling system that supports the health, safety and well-being of students.

31. For this group of parents, the uncertainty caused by criminalisation of decisions they can only partially control, will be significant.
32. The removal of exemptions and increased focus on enforcement may lead to perceptions from some students and their families that a punitive approach is being taken, rather than a support-based approach. This may strengthen negative attitudes towards attendance that some students and families hold, negatively impacting attendance further. This may further increase the barriers that vulnerable students and families face.
33. Public consultation would be the main way to mitigate and manage this risk, notwithstanding that the planned legislative timetable does not allow for it.

### **External advice relating to exemptions from attendance and section 45**

*The Ministry's Attendance Expert Advisory Group (EAG) have provided feedback regarding the possible removal of section 45*

34. The EAG are opposed to the removal of section 45 in full. They can see there may be a need to change section 45, for example by creating a connection to the STAR. They felt this would create consistency without removing the decision-making authority of a school principal.
35. The EAG note the concerns about current decision-making powers of principals being misused, however they have not found this to be the case, and found the examples provided were special circumstances. They note that exemptions given in the future would need to be recorded under the STAR reporting and would therefore be transparent.

*The Legislation Design and Advisory Committee (LDAC) have provided feedback regarding the possible removal of section 45*

36. The Ministry consulted with the LDAC January 2025 to discuss amending the Act to revoke section 45. LDAC advice included that the current regime provides for myriad life circumstances (resulting in absence) to be responded to using the principals' discretion enabled by section 45. If section 45 were to be removed it would need to be replaced with something, such as a list of reasons that absence from school is acceptable. They also recommend that some residual discretionary power is retained, to be used in exceptional circumstances.

*Rare Disorders New Zealand (RDNZ) previously met with your office to discuss exemptions from attendance*

37. A representative from RDNZ met with your office in November last year to discuss the attendance allowances required for students with chronic health conditions and disabilities. Your office then advised us of your preference to ensure that comments from RDNZ inform any policy work relating to exemptions from attendance.
38. Key comments from RDNZ include that there needs to be an exemption pathway for families with children with rare and/or chronic conditions, and that some families already face a very high administrative load. Strict approaches may cause unintended harm, add stress, and push many young people and their families away from education.
39. RDNZ suggest that this could be a medical certificate-based exemption system that includes a review period determined by the student's medical team. They note that any exemption process should be needs-based rather than diagnosis-based, as many disorders can take several years to be diagnosed. They suggest an exemption should be able to be transferred between schools as the student moves (with parental and youth consent where applicable). This will significantly reduce the administrative load for families and schools.

## Options for actions to accompany or follow the removal of sections 44 and 45

40. Removing the exemption power of principals leaves nothing in the system for ensuring that valid reasons for absence (e.g., illness, injury, bereavement) can be exempted for the requirements of section 36 and therefore not be considered illegal.
41. We have considered options for mechanisms that could be used to ensure that common and reasonable absences do not trigger a prosecution process or come under undue scrutiny if principal exemptions were to be removed.
42. An outline of two options is provided below. These or similar approaches can be explored further following your direction.

### Option One – Amend section 45 so that it provides for principals only being able to exempt on the grounds prescribed in regulations

43. This would include creating a new regulation making power that would enable Ministers to prescribe the grounds on which a principal can give an exemption, and the types of evidence the principal must receive to determine an exemption.
44. This option strongly tightens what is currently in place. It removes the justification aspect of the current section 45, enabling principals to only be able to exempt absence in certain situations. It also provides the opportunity to set out the instances an exemption can be made, and the evidence required (with these being set out in regulations).
45. Option One also enables an exemption making process for principals to deal with situations of genuine absence that can be exempted rather than become unlawful due to parents not meeting their obligations under section 36<sup>5</sup> of the Act.
46. While this option tightens the current exemption process available to principals it has the potential to restrict the ability of the Act. This is because it will reduce the ability to meet what are often highly contextual and localised situations that a set of regulations will struggle to be able to cover in totality.
47. We recommend that if you proceed with amending section 45, it is alongside this option being progressed. This aligns with the LDAC recommendation, with their advice being that parents need to be able to read the law and understand how to comply with it, and it is not practical or reasonable to not include acceptable reasons for absence in the Act.

### Option Two – AMPs and the STAR would govern how absences are dealt with

48. This option will see no further changes being made to the Act following the removal of sections 44 and 45 in full. This will mean that the AMPs and STAR framework would govern school responses to returning students to regular attendance and, if all reasonable actions have been taken, to consider prosecution.
49. This would not resolve the issue of all absences being illegal. However, it would mean that prosecution would only be considered in line with the school's responses, using the AMP and the STAR, to return the student to regular attendance. This still carries many of the same risks as are outlined above but may reduce the risk of confusion regarding which absences may result in prosecution, and which will not.

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<sup>5</sup> s36 Students of registered schools required to attend whenever schools are open

## Next Steps

50. Once we have received an indication of your preferred option, we will draft you a paper to be considered by Cabinet, alongside the associated Regulatory Impact Statement.
51. While timelines are tight, we recommend a targeted consultation of departments and Ministers before confirming final decisions to go to Cabinet. The Cabinet paper is currently scheduled to be lodged on Thursday 7 August, to be considered by SOU on Wednesday 13 August, and Cabinet on Monday 18 August.

## Recommended Actions

The Ministry of Education recommends you:

a. **note** that this report responds to your request for advice about removing section 45 of the Act (exemptions of students from attendance for a period of no more than 5 school days, if the principal believes the reason is justified), and section 44 of the Act (exemption from attendance because of walking distance to school or some other reason)

Noted

b. **note** that removing these exemptions will remove all exemption pathways for students, meaning any absence will be illegal in regard to parents meeting their section 36 obligations (students of registered schools required to attend whenever schools are open)

Noted

c. **indicate** which of the following two options you would like to proceed with for section 45:

i. Option one (recommended): amend section 45 to set out new conditions for principals only being able to exempt for the grounds prescribed in regulations

Agree / Disagree

OR

ii. Option two: remove section 45 in full, with the AMP and STAR policies (i.e., thresholds) guiding responses to absence, including decisions to consider prosecution

Agree / Disagree

d. **agree** that the Ministry of Education release this paper following Cabinet decisions with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982

Agree / Disagree

e. **note** that we have identified the following additional considerations about section 44 through this review:

i. Issue 1: Section 44 contains the ability for the Secretary to exempt absences for no more than 7 school days for any other reason they think is sensible

ii. Issue 2: If section 44 is removed then section 46 will also be removed, as removal of section 44 will make it redundant

Noted

f. **confirm** you wish to remove section 44 of the Act in full

Agree / Disagree



Sela Finau  
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**Learner Success and Tiriti Policy**  
**Te Pou Kaupapahere**

17/07/2025



Hon. David Seymour  
**Associate Minister of Education**

20/7/25



## Annex 1: Options Analysis

### Criteria for analysis

Criteria	Description
<b>Effectiveness</b>	Extent to which the option supports regular school attendance for every enrolled student; and protects parents from legal liability where attendance would be unreasonable or unavoidable
<b>Cost</b>	Extent to which the option may cost including both financial and administrative burdens of enforcement. Overly complex rules may be too expensive or impractical to enforce.
<b>Flexibility</b>	Extent to which the option allows the system to adapt to changing circumstances or new information without becoming obsolete or overly rigid.

Table 1. Analysis of removing section 45 in full.

Removing section 45 in full	
<b>Effectiveness</b>	Removing Section 45 will impact on effectiveness as it will create, at least initially, confusion about the illegality of any non-attendance and what it will mean for parents. This will likely settle once people become understanding of the situation but that could take some time. With no exemption pathway for students, students and parents' understanding the new approach will become reliant on schools and them having very effective, consistent and transparent AMPs and STAR or similar approaches. System capability will take time to build while also trying to ensure that schools are doing this well, requiring a lot of Ministry and ERO resource to manage.
<b>Cost</b>	The cost is the loss of an ability to keep people in the system legal without any tier one legislation to do this. There will likely be a cost to the Ministry and ERO in having to develop new systems and processes to ensure the system is implementing the new AMP regulations as they will be the mechanism for dealing with different absences moving forward. There will also be a cost to schools in developing these processes and procedures.
<b>Flexibility</b>	Because there will be no exemption, the flexibility for schools to be able to exempt absence for any contextually rich situation may reduce if regulations replace the exemption. This is because they will likely not be able to cover every possible situation or context.

Table 2. Analysis of removing section 44 in full.

Remove all of Section 44 and make no other changes	
<b>Effectiveness</b>	Removing section 44 in full could be an efficient and sensible response to a section that appears to be unused. Even removing section 1(c) – the Secretary's power to exempt attendance for up to 7 days, is likely to have minimal impact as it has not been used. However, given all the changes being made in the system, including making parents more accountable for getting their children to school, it makes sense that having a two-tiered exemption process that 44 1(c) provides (in combination with section 45), is available to meet the broad range of non-attendance contexts where exempting attendance needs to be considered. Removal of section 44 in full will mean that no exemption pathways for students with chronic health conditions/significant illness or injury will remain in the Act.
<b>Cost</b>	There is little cost to removing the whole section. If Section 45 is also removed, then there could be significant cost in terms of duress and concern from parents of children with chronic illness or injuries as well as disabled students as the health of their children could easily push them into the high thresholds on non-attendance and these would be deemed illegal.
<b>Flexibility</b>	Removing a largely unused and outdated section of the Act does little to affect the system's ability to be able to respond and adapt as things change. However, removing the Secretary's ability to exempt in certain cases is a useful backstop to have in the system and wholesale removal may be premature, especially if section 45 is removed.