



Report: ERO reviews triggering responses to schools of serious concern

To:	Hon Erica Stanford, Minister of Education		
Date:	15/07/2025	Deadline:	21/07/2025
Security Level:	In-Confidence	Priority:	High
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Why are we sending this to you?

- You requested advice on options to amend the Education System Reform Bill (ERB) to automatically trigger intervention when the Education Review Office (ERO) judges that a school is of serious concern.

What action do we need, by when?

- We are seeking a decision by 21 July. If Cabinet decisions are required, a timeline for obtaining these by 25 August 2025 is set out below.

Key facts, issues and questions

- ERO reviews school performance and recommends improvement actions. Through its regular contact and ongoing relationships with schools, the Ministry of Education will also become aware of concerns about the performance of a school and will identify need for action, including the use of intervention powers under section 171 of the Education and Training Act 2020 (the Act).
- Whether concerns are identified by ERO or the Ministry, the Ministry or Minister is the decision maker on what action to take in response. ERO recommendations do not automatically trigger regulatory action where there are serious concerns.
- Operational changes are improving processes between agencies where ERO identifies serious concerns about a school, to support appropriate action in a timely manner.
- While the Ministry considers that building on these operational arrangements is the best way forward, you could consider legislative amendments to trigger action (Annex 1). This includes ERO's preferred approach of requiring the Ministry/Minister to use one of a set of intervention actions where a school is judged by ERO to be of serious concern.
- The success of any regulatory change is dependent on the strengthening of operational improvements to processes and will not, in itself, improve the timeliness and consistency of actions for the small number of schools of serious concern.

Alignment with Government priorities

1. The proposals in this report align with Government's priority to lift educational outcomes by improving the timeliness and consistency of the response when ERO identifies school of 'serious concern'.

Background

2. Currently, there are too many failing schools. Of the 2,463 schools across New Zealand, ERO has identified 173 schools of concern (7%). 9(2)(f)(iv) [redacted] The proposals in this report are focused on the small number of schools of serious concern.
3. ERO and the Ministry have been working to improve operational processes for the group of schools in the most serious circumstances. These changes recognised the importance of both agencies acting promptly for this type of school and that this is dependent on agencies developing a shared understanding of the issues and possible solutions.
4. Annex 2 shows that a more effective operational response to schools of serious concern is likely where:
 - 4.1. draft ERO reports identifying concerns are shared with the Ministry so there is an opportunity to share insights and influence the final review and its recommendations
 - 4.2. the Ministry has an early opportunity to identify any targeted support required
 - 4.3. the final ERO review is provided to the Ministry promptly and has the necessary information to support its decision making, an assessment of whether the statutory test to intervene has been met, and an indication of which intervention is most appropriate
 - 4.4. there are effective local collaborative relationships, processes, and feedback loops between ERO and the Ministry.
5. Despite progress, there are still delays in action for some schools identified as being of 'serious concern'. The Ministry considers that consistency and timeliness can be addressed through operational improvements by both agencies. However, ERO considers that operational improvements may not be sufficient to drive consistent action regarding these schools, across the country.
6. As discussed below, a robust operational definition of 'schools causing serious concern' is critical to the success of the response. As are ERO reports that are clear, coherent, consistent and usable for a decision to intervene and which intervention is reasonable to deal with the risk but no more than is necessary in the affairs of the school.
7. There will continue to be occasions where the Ministry identifies concerns about a school independently of an ERO review and will determine that it needs to intervene. This includes, but is not limited to, school considered to be of 'serious concern'.
8. ERO has the power to identify where schools are causing serious concern, recommend improvement actions, and monitor them closely. ERO is concerned their judgements do not automatically trigger intervention action and ERO does not currently design its reports for this purpose. This can lead to:
 - 8.1. delays between ERO identifying a serious performance issue and action (intervention) being taken, so opportunities to respond earlier to poor performance are missed
 - 8.2. action taken that is not always aligned to the scale or nature of the problem.
9. This advice only seeks to address the issue of intervention action being taken by the Ministry/Minister in response to ERO reviews identifying schools of 'serious concern'. 9(2)(f)

9(2)(f)(iv)

Summary of proposals

10. The table in Annex 1 sets out three options to improve the timeliness and effectiveness of action being taken to address schools of serious concern.

Option 1 – build on operational arrangements

11. This option would strengthen operational arrangements to make the process of responding to ERO's concerns more consistent and retain current decision-making responsibilities with the Ministry/Minister (*Ministry's preferred option*).
12. The implementation of this option is fundamental to the success of either of the legislative options below.

Option 2 – require an immediate response and report to the Minister

13. This option amends the Act to require an immediate response by the Ministry when ERO identifies in its school review report a school of 'serious concern' – including a requirement to assess whether interventions under Education Act 2020, section 171 should be used, and to report to the Minister and ERO on what action has been taken (or what action it is recommended that the Minister take) and why within 30 days of the confirmation of the report.

Option 3 – require one of a set of interventions be used by the Ministry or Minister

14. This option amends the Act to require that the Ministry/Minister must use one of a set of intervention actions in response to ERO judging a school to be of 'serious concern'. The Ministry/Minister retain the ability to decide on which of these interventions to use. (*ERO's preferred option*).
15. In this option, given it will be used to respond to the small number of schools with the worst performance issues, it will be mandatory for the Ministry or Minister to employ one of the following section 171 interventions:
- 15.1. issue a performance notice requiring the board to carry out an action by a specific time (Secretary)
 - 15.2. appoint a board member for a specific time (Minister)
 - 15.3. appoint a Limited Statutory Manager (Secretary, at direction of Minister)
 - 15.4. dissolve a board and appoint a Commissioner (Secretary, at direction of Minister).
16. In addition to these section 171 interventions, option 3 could be extended to require the Minister to consider utilising powers to:
- 16.1. close a school (section 199)
 - 16.2. direct the merging of a school with another school (section 206).
17. We have included this as a separate extension of option 3 given that these powers are primarily used as network management tools as opposed to tools for addressing performance issues in schools.
18. The Ministry is of the view that these powers should not be in scope of this proposal. The Ministry can provide you with more detailed advice, including on the legal risks, if you would like this option explored further.

Additional discounted option

19. We also considered an option which would have amended the Act so that, where ERO determined that a school was of 'serious concern', the Ministry/Minister would be required

to intervene and use the specific intervention recommended by ERO. This would remove decision rights from the Ministry/Minister both over whether to intervene in these schools and over what response is most appropriate. It would have further expanded ERO's role to decision maker on enforcement and may have exposed the Ministry and Minister to successful legal challenge on decisions that it, or the Minister, had no control over. We have not, therefore, included it in the options analysed in Annex 1.

Assessment of options

20. The three options included in Annex 1 balance greater certainty, timeliness and effectiveness of action with maintaining a clear distinction between agency roles and responsibilities (including existing decision-making responsibilities).
21. Option 1 maintains a distinction between agency roles, including being clear that the Ministry (or Minister) is the decision-maker responsible for intervention and enforcement decisions. Option 1 recognises that further improvement is possible within the current regulatory settings and without the need to legislate to change existing decision rights, responsibilities or processes. The Ministry considers that getting this option right would remove the need to legislate and without it any legislative option would be ineffective.
22. While decision-making responsibility remains with the Ministry (and Minister) in Option 2, it introduces some constraints on the decision-making by introducing statutory timeframes and processes for the small number of schools ERO identifies as of 'serious concern'.
23. Option 3 automatically triggers the Ministry or Minister to intervene in schools identified as of 'serious concern'. ERO considers that this will be most effective at reducing delays in intervention action being taken. However, it has the effect of shifting decision-making responsibility regarding whether an intervention is required from the Ministry (or Minister) to ERO for these schools. The Ministry's or Minister's decision rights are further restricted to a choice between the interventions outlined in paragraph 14.
24. For all options we will also undertake the following critical actions:
 - 24.1. ensure that ERO's judgements are applied consistently and proportionately in response to the worst performing schools. To achieve this, ERO will work with the Ministry to develop a robust operational definition with precise and unambiguous reporting of a new, distinct, category of 'schools causing serious concern'. 9(2)(f)
[REDACTED] (iv)
[REDACTED]
[REDACTED]
 - 24.2. ERO will deliver on a refreshed workplan for improving its current approach to reporting to ensure reports are clear, coherent, consistent and usable. This will ensure the Ministry/ Minister can rely on the information provided by ERO being at a standard to support the intervention and timely decision making.
25. For options 2 and 3 amendments would be required to make it explicit in the Act that ERO would notify the Ministry, and the school, within 30 days from when it judges a school to be of serious concern. Amendments would also be required to make it explicit that ERO's judgements may be used by the Ministry/Minister to justify the use of an intervention (the Ministry/ Minister will be relying on the information provided by ERO being at a standard to support the intervention and timely decision making).

Next Steps

26. If you select option 2 or 3, we will develop a Cabinet paper to obtain any necessary policy decisions for the proposal to be included in the Bill with the following timeline:

Milestone	Timing
Cabinet Paper and Regulatory Impact Statement development	15 – 25 July 2025
Minister receives Cabinet Paper and Regulatory Impact Statement	25 July 2025
Ministerial approval for consultation	30 July 2025
Departmental and Ministerial consultation	30 July – 8 August 2025
Finalise Cabinet Paper	11 – 13 August 2025
Lodge Cabinet paper	14 August 2025
Cabinet Social Outcomes Committee	20 August 2025
Cabinet	25 August 2025
Drafting instructions issued	26 August 2025

Annexes

The following is annexed to this paper:

Annex 1: Table of Options

Annex 2: Example of collaboration between ERO and the Ministry.

Recommended actions:

The Ministry of Education and Education Review Office recommend you:

a. **note** that you have asked for options to include a legislative amendment in the Education System Reform Bill for an automatic trigger whereby ERO's judgement that a school is of serious concern triggers section 171 intervention powers

Noted

b. **note** that Annex 1 sets out three options for your consideration

Noted

c. **indicate** your preferred option by agreeing to it on Annex 1

Yes / No

d. **note** that under each option ERO will work with the Ministry to define a specific category of 'schools causing serious concern' (2)(f)(iv)

Noted

e. **note** that under the legislative options:

i. an ERO judgement that a school is "of serious concern" can be considered justification for an intervention (and the Ministry/Minister can rely on this judgement and the information provided by ERO when intervening)

Noted

ii. ERO will be required to notify the Ministry and the school board when they identify a school of serious concern within 30 days

Noted

f. 9(2)(f)(iv)

Noted

g. **agree** to discuss this report jointly with ERO and Ministry officials ✓

Agree / Disagree

Proactive Release:

- h. **agree** that the Ministry of Education release this paper once Cabinet has taken decisions on your preferred approach, with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.

Agree / Disagree



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Te Pou Kaupapahere

16/07/2025



Hon Erica Stanford
Minister of Education

20/7/25

Carolyn Palmer
Deputy Chief Executive
Education Review Office

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Proactively Released

Annex 1: Options to strengthen automatic triggers for action where ERO identifies serious concerns about a school

Detail	Assessment	Preferred option?
Option 1: Build on existing operational arrangements to make the process of responding to ERO's concerns more consistent (Ministry's preferred option)		
<ul style="list-style-type: none"> • This option would build on work already underway to put in place operational mechanisms to formalise and strengthen arrangements, timeframes, and processes for Ministry officials to respond to ERO's recommended actions in schools of concern. • There would be no statutory lever to automatically trigger action being taken, but operational agreements would make the response to schools of concern more consistent and timelier. 	<p>Pros:</p> <ul style="list-style-type: none"> • Can be advanced more quickly than other options - legislative change is not required. • Strengthens operational procedures to improve timeliness of responses to the worst performing schools. • Provides a foundation for improvement; the success of any regulatory changes would be dependent on these operational improvements. • Is consistent with agency roles, responsibilities or powers – including existing decision-making responsibility on schools of concern. • Allows the decision maker to balance or supplement insights from ERO's reports with other insights and information and provides greatest flexibility to respond to the specific causes of a school's failure – including leadership and teaching quality. <p>Cons:</p> <ul style="list-style-type: none"> • Does not provide an automatic statutory trigger for action. 	<p>Agree / Disagree</p>
Option 2: Legislate to require an immediate response by the Ministry when ERO identifies a 'school of serious concern' – including timeframes, a requirement to assess whether interventions under section 171 should be used, and a requirement to report to the Minister and ERO on what action has been taken and why within 30 days		
<ul style="list-style-type: none"> • When ERO judges a school to be of serious concern and provides a recommended intervention for the Ministry or Minister to use. <ul style="list-style-type: none"> ◦ The Ministry would be required to consider this report and recommendation, decide on a course of action (including intervention under section 171), and report to ERO and the Minister on the actions taken and the reasons - within 30 days. This includes reporting how the Ministry has assessed the appropriate use of the interventions in section 171. ◦ The Minister could set performance expectations for a shorter timeframe, as required. • ERO must notify the Ministry and the school within 30 days of their judgement that a school is of serious concern. • Decisions on whether to intervene and the type of intervention remain with the Ministry (or Minister). As do decisions to provide additional governance or operational support instead of, or alongside, an intervention. • ERO and the Ministry would work together to agree the information ERO needs to provide to support decision making and to define 'schools of serious concern'. Final decisions around operational procedures would remain with the CRO. • The Act would be amended so that the Ministry can rely on ERO's judgement, and the information provided when intervening (similar to private schools where the Secretary may act based on an ERO review). • This will require the Ministry/ Minister being able to rely on the information provided by ERO being at a standard to support intervention/decision making. 	<p>Pros:</p> <ul style="list-style-type: none"> • Puts a statutory timeframe on action for the worst performing schools. • Formalises the process for responding to schools of serious concern in line with ERO's recommendations. • Provides the Ministry/Minister with evidence and justification needed to intervene, improving timeliness. <p>Cons:</p> <ul style="list-style-type: none"> • Places statutory timeframes and processes that restrict current decision-making processes by the Ministry and Minister. • Requires the Ministry to commit resources to respond to recommendations in the statutory timeframes. • Does not guarantee intervention action. • May lead to duplication of roles and delayed action if the consideration process leads to a de facto re-evaluation of schools to confirm ERO's judgement or supplement information. 	<p>Agree / Disagree</p>

9(2)(g)(i)

Detail	Assessment	Preferred option?
<p>Option 3: Legislate to require that the Ministry/Minister <u>must use</u> one of a set of intervention actions in response to a school being judged by ERO to be of serious concern. The Ministry/Minister retain the ability to decide on the best intervention to use. (ERO's preferred option)</p>		
<ul style="list-style-type: none"> • When ERO judges a school to be of serious concern, this would trigger a requirement on the Ministry/Minister <u>to use</u> one of the following interventions: <ul style="list-style-type: none"> ○ Issue a performance notice requiring the board to carry out an action by a specific time (Secretary) ○ Appoint a board member for a specific time (Minister) ○ Appoint a Limited Statutory Manager (Secretary, at direction of Minister) ○ Dissolve a board and appoint a Commissioner (Secretary, at direction of Minister). • ERO must notify the Ministry within 30 days of their judgement that a school is of serious concern. • While the Ministry or Minister must intervene, the decision on which of these interventions is appropriate remains with the Minister (or Ministry). <p>[Option 3 extended]</p> <ul style="list-style-type: none"> • There is also the option to extend this proposal so that a judgement from ERO that a school is of serious concern would require the Minister <i>to consider</i> utilising the following powers: <ul style="list-style-type: none"> ○ Close a school (Minister S199) ○ Direct a school to merge with another (Minister S206). • As these powers are currently under the absolute discretion of the Minister, the Minister would retain the ability to decide whether to consider them appropriate interventions. • The Ministry of Education is of the view that these powers should not be in scope of this proposal. If included, the Ministry of Education would want to provide you with more detailed advice on using these powers this way, including on the legal risks. 	<p>Pros:</p> <ul style="list-style-type: none"> • Automatically triggers intervention action being taken for the worst performing schools. • Reduces duplication and improves timeliness where the Ministry or Minister can rely on ERO's judgement and evidence and take quicker action to address these concerns. • Ministry/Minister retains decision making power about which intervention power to use from the list. <p>Cons:</p> <ul style="list-style-type: none"> • ERO effectively becomes a decision maker for whether there is an intervention because it triggers interventions in schools of serious concern. The Ministry or Minister's decisions are limited to a choice between four interventions and while they can choose to put in place additional supports, the ability to choose not to issue an intervention is removed. • The risk of judicial review is extended to both the Ministry and ERO, given the Ministry will need to rely on ERO's judgements. This can be mitigated by: <ul style="list-style-type: none"> ○ restricting action to a select group of the worst performing schools ○ strong recording of processes and decision making by ERO and the Ministry ○ Minister being confident of sufficient information and documentation of processes to decide on the intervention ○ successful judicial reviews of interventions in schools are rare, although the impact of these changes on this behaviour is unknown. <p>[Option 3 extended]</p> <ul style="list-style-type: none"> • Decisions to close or merge a school are primarily network management powers that require a view across the network rather than a focus on one school. While these actions may be proportionate to deal with some cases of the worst performing schools, they are likely to be slow to implement in practice. The Act requires the Minister to consult and sets timeframes for decision making and mergers (mergers take effect no less than one term after the notice to merge is gazetted). • 9(2)(h) [REDACTED] 	<p>Agree / Disagree</p> <p>Inclusion of extension option:</p> <p>Agree / Disagree</p>

Proactive

Annex 2: Collaboration between ERO and the Ministry when a review identifies concerns

Where the process works well:

- ERO undertakes a review and provides the school with a draft report indicating the need for further intervention or support from the Ministry.
- ERO sends the unconfirmed report to the Ministry when their findings identify steps that require targeted support from the Ministry. The Ministry and ERO discuss and unpack the report findings and have initial conversations around what support could look like.
- ERO provides the school with the final report recommending either a direct action/intervention or a more general statement that requires further Ministry review and appropriate follow-up action.
- the Ministry engages with the Board to discuss recommendations and plan a way forward.

The key insights from ERO often reinforce the evidence the Ministry has gathered and can dig deeper into teaching, learning and student achievement.

The Ministry makes the final decision on the appropriate action/ intervention drawing on evidence from multiple sources. This could include seeking further information from ERO to assess if the statutory test for an intervention has been met and in determining which intervention is used (the statutory requirement that the intervention is “reasonable to deal with the risk without intervening more than necessary in the affairs of the school”). This could determine that the best response is operational support (e.g. focused on leadership or teaching quality issues) rather than a statutory intervention aimed at the performance of the Board.

While this process can support effective action being identified and taken in schools of serious concern, under current practice, it does not always run this smoothly which can lead to delays on the part of both agencies and/or action not being aligned to the scale or nature of the problem.