



MINISTRY OF EDUCATION

Te Tāhuhu o te Mātauranga



Improving Attendance

*Case management of truancy
and the prosecution process*

2010



These guidelines are designed to accompany and follow on from the Attendance Guidelines in the Student Support Handbook.

The guidelines and sample templates are available electronically at www.minedu.govt.nz

Please note: The word **parents** in this document should be taken to mean **parent, parents, whānau and/or legal guardian/s**.



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Introduction

Keeping our children and young people attending school and engaging in education has always been important.

Attendance and engagement in school improves employment, social and life chances and reduces the development of antisocial behaviour and youth offending.

Poor attendance, or truancy is a clear indicator of disengagement from education and is often a precursor to students leaving school early without the education and qualifications they need to succeed in today's world. Truancy can often lead to other more serious misbehaviours that may set young people on an unsatisfactory life pathway with poor social and economic outcomes.

The school should have systems to monitor student attendance, identify poor attendance and/or truancy and provide support and assistance to improve attendance and commend students' changed behaviour.

Some students need extra support to keep them engaged in education. Schools and parents need to work together to enable these students to stay engaged at school.¹

Audience

These guidelines are for boards of trustees and school managers. They cover:

- monitoring non-attendance
- following up on truancy incidents and patterns
- intervening with support to improve attendance
- considering prosecution of parent/s for their child's truancy, when all other attempts to tackle the truancy have been unsuccessful.

Example documentation and templates are provided in Appendix 1.

Case management

The case management approach outlined in these guidelines is designed for all schools irrespective of whether they are participants in community based initiatives such as Reduce Our Community Kids Offending Now (ROCK ON). If a programme like this is available in your area, please establish a link or continue to link with it. But if your area doesn't have a community programme, these guidelines provide suggestions and a process for you to follow independently.

Prosecution

Prosecution, or even the possibility of it, is one way of emphasising to parents their legal responsibility with regard to their child's attendance. It can also help to gain the support of parents in returning a student to regular attendance.

However, prosecuting parents should be a last resort. Only when the truancy is ongoing and persistent, appears to be parent condoned (tacit or actual), and when all previous interventions to support a return to school have been unsuccessful should you consider prosecution.

To prosecute, if it is necessary, you need to have recorded evidence of the incidents of truancy and interventions you have made. This is so you can produce the necessary documents in court to support the charge.

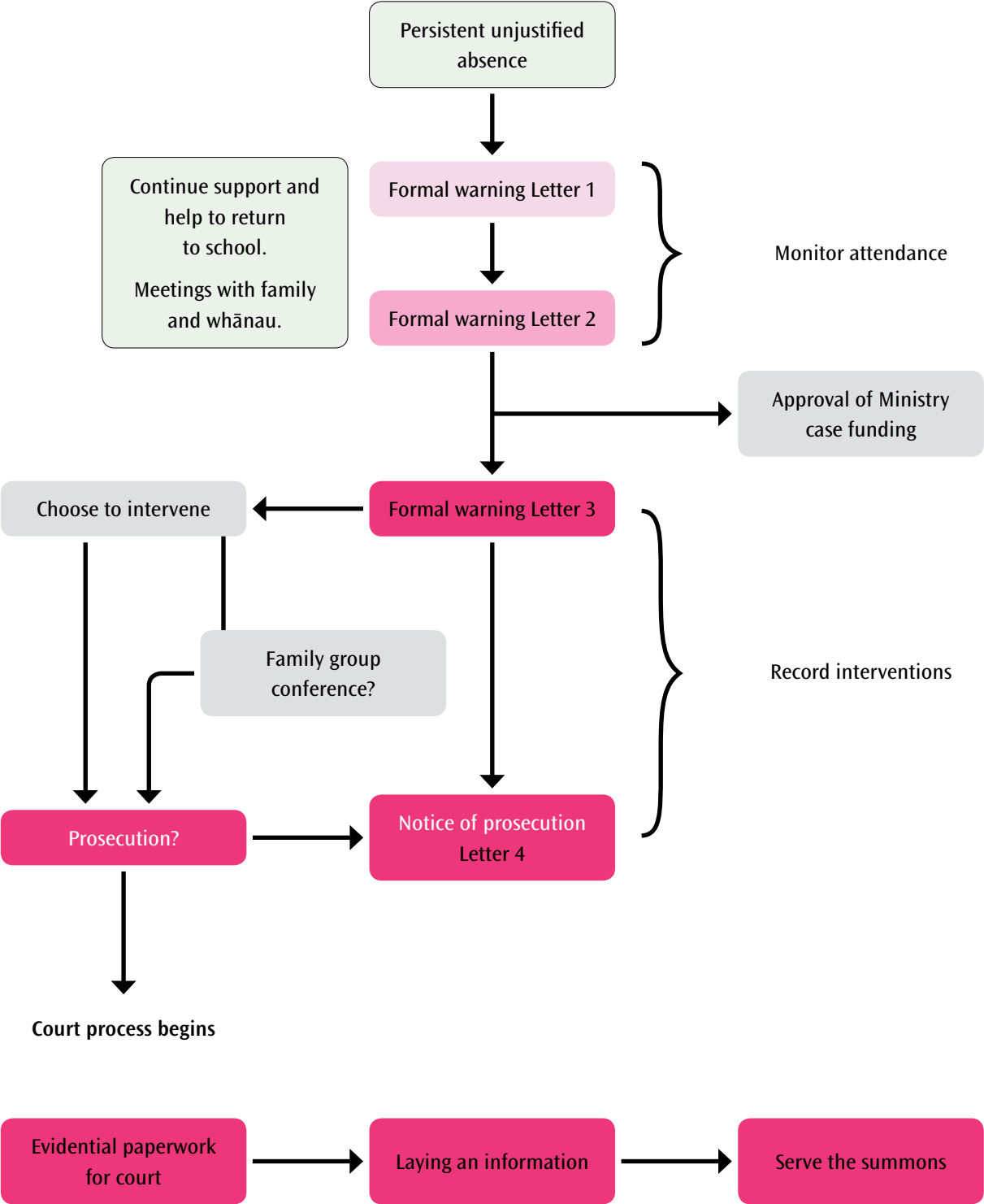
This process provides a way to manage a truancy case until the problem is resolved.

An overview of the case management and prosecution process is shown below, and described in further detail in the following sections.

These guidelines provide all the information you need. You can also contact your local Ministry of Education office if you wish to discuss case management or prosecution.

¹ For further information visit http://www.tki.org.nz/t/student_support.

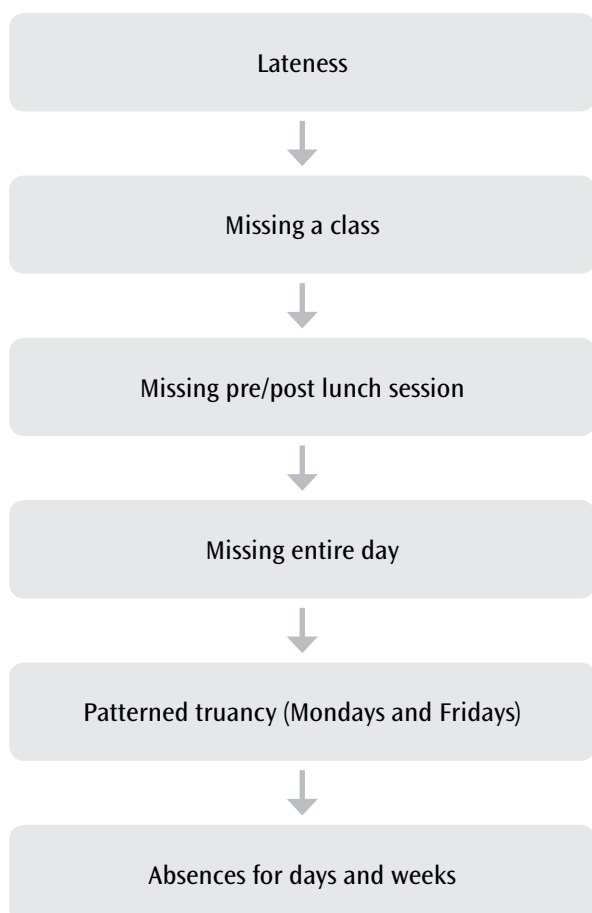
Case management and prosecution process overview



Improving attendance

Truancy is when a student is absent without an explanation or satisfactory explanation to the principal. It is the most easily identified expression of disengagement.

Truancy often escalates:



“As we all know, non-participation in school is probably the greatest correlative to youth offending. We also know that learning difficulties, behavioural difficulties, and school disengagement often run hand in hand, and compound the risks of offending and re-offending.”

Judge Becroft, Principal Youth Court Judge

Improving attendance will ultimately improve the student’s life chances.²

Improving attendance

Truancy incidents or poor attendance patterns are best addressed as soon as they begin to emerge, rather than being left until the patterns become entrenched and more difficult to turn around.

School boards, through their attendance policies, and using the school’s leadership team and student management systems, must set expectations for, monitor and follow up any unjustified absences.

Schools must take action when unjustified absences are identified, and work with students and their parents to ensure students attend school regularly and engage with education.³ These actions include:

- setting clear expectations for student attendance, including being on time for school and class

² From consultation “Staying at School Consultation Report 2006”.

³ See Attendance Guidelines. In Student Support Handbook folder.

- establishing and maintaining attendance record-keeping to ensure effective tracking of attendance. This will enable schools to take action when required, and the impact of that action to be monitored
- having a clear process for notifying absences and for contacting parents quickly and consistently if a student is absent without explanation
- giving prompt support, guidance and structure to help a truanting student return to school and improve attendance, before truancy becomes entrenched behaviour.

Some factors which can contribute to a student developing a serious truancy problem include lack of success at school, boredom, bullying, family situations, drug and alcohol abuse, mental health issues or poor social skills.

Identifying and addressing the underlying causes of poor attendance may require schools to provide significant additional support and help the student make changes in his/her life. For example, schools may need to:⁴

- adjust the student's programme to make schooling more relevant to the student's future goals (e.g. change classes or teachers; two days in school with three days in a work environment)
- provide literacy and numeracy catch-up tuition for students who are struggling or have fallen behind
- develop strategies for keeping 'at-risk' students connected and engaged in learning
- consider teacher relationships and interactions with students and what professional

development teachers need to respond to the diverse needs of their students

- adapt teaching styles to meet the needs of all learners, including those who are 'at risk' of disengagement from school
- help parents become more involved in supporting their children's education
- communicate proactively with different cultural communities to ensure connections are made, messages received and solutions to problems and barriers found
- promote and explain the relevance of subjects/ learning (e.g. linking learning to employment or study outcomes)
- provide learning pathways and careers advice so students know where they are heading and school becomes more meaningful (e.g. by using career advisory services)
- encourage students to become involved in co-curricular and extra-curricular activities (e.g. sports)
- make health and social agency referrals
- give students opportunities to develop other effective relationships (e.g. mentoring provided by adults who may be positive role models or available from time to time for students to talk to at school)
- consider alternative education options.

There are a number of professionals who can help schools identify underlying causes of truancy, including District Truancy Services officers, Resource Teachers: Learning and Behaviour, school counsellors, social workers, Youth Aid (NZ Police), iwi social services providers and Strengthening Families.



Useful links

<http://www.tki.org.nz/attendance>

Attendance Guidelines published in Student Support Handbook folder.

http://www.tki.org.nz/r/student_support/

This site has useful information on student attendance and supporting positive behaviours in schools.

www.minedu.govt.nz/SEPublicationsAndResources

This guide will help you manage students who need additional support for learning and manage crisis situations. It includes sections on learning difficulties, student attendance issues and student behaviour.

⁴ Most of these suggestions come from the report "Staying at School Consultation Report" (2006).



Useful links *cont.*

<http://www.educationalleaders.govt.nz/Attendance>

This guide focuses on administration of attendance, monitoring attendance levels at your school and getting beyond the collection of data. It includes:

- Presence and absence: The administrative requirements
- Your school: Attendance as it is now
- Engagement and attendance: Beyond data collection.

<http://www.educationcounts.govt.nz/24136>

Findings from the 2006 consultation on 'Staying at School'. This report for the Ministry of Education explored the views of students, caregivers, schools and other sector stakeholders about the drivers of early-leaving decisions, and the factors that might encourage greater school-student retention. It covers student engagement/disengagement and reasons for truancy, and gives suggestions for improving student attendance and engagement.

<http://www.minedu.govt.nz/InterimResponseFund>

The Interim Response Fund (IRF) is a fund of money, managed by regional education, curriculum and performance managers, to help schools manage student behaviour that has reached crisis point. The Manual for Principals outlines the purpose of the fund, the access criteria, how to apply for assistance from the fund, payment and reporting systems, and suggestions for the use of the fund.

<http://www.edgazette.govt.nz/Articles/Article.aspx?ArticleId=7765>

ROCK ON initiative –article in *Education Gazette*, 9 February 2009.
Explains the programme.

<http://www.minedu.govt.nz/eAR>

Information on the **Electronic Attendance Register (eAR)** and **Early Notification text messaging (EN)** and their uses for monitoring attendance, analysing attendance data and informing approaches to improving attendance.

<http://www.educationcounts.govt.nz/50254>

Background of students in Alternative Education: Interviews with a selected 2008 cohort.

<http://www.minedu.govt.nz/NonAttendanceTruancy>

Evaluation of District Truancy Services 2009.



Legal responsibilities for attendance

Parents

Everyone between the ages of 5 and 19 is entitled to enrol at and have their education funded at a New Zealand state school if they are a New Zealand citizen or resident, an Australian citizen or otherwise qualify for domestic student status.

Under the Education Act 1989, parents are legally obliged to enrol their children in school from the age of 6 to 16, and to ensure that their children attend school every day the school is open for instruction, unless there is a justifiable reason for their absence (e.g. illness, family bereavement). It is an offence if parents refuse or fail to do so.

Schools

School boards of trustees are legally required⁵ to take all reasonable steps to ensure enrolled students attend school every day, unless there is a justifiable reason for their absence.

Schools should have policies, processes and personnel to monitor attendance, follow up on absences and take action quickly when instances and patterns of poor attendance emerge. Schools must make every attempt to return a truanting student to regular attendance.

⁵ Education Act 1989 Section 31(3).



Case management

Case management is where a school puts in place a supportive process at the earliest signs of a student's truancy, to help the student return to regular attendance.

When schools take a proactive approach to case management of truancy, the truancy is more likely to be resolved at an early stage.

Proactive case management involves a school working together with parents to identify the reasons for a student's truancy and then formulating strategies to help the student back to regular attendance.

When school and parents connect in this way, it often results in the improved attendance of a previously truanting student.

It is helpful if your school participates in community-based, inter-agency programmes that co-ordinate the youth work of the NZ Police, Ministries of Education and Health, schools, Child Youth and Family, and some non-government organisations. These programmes help to support young people, including reducing truancy, encouraging student engagement in education, reducing youth offending and improving social and health outcomes.

If you suspect that a student is truant due to care and protection issues, the truancy (and wider problems) may be best addressed through a care and protection Family Group Conference led by a Care and Protection co-ordinator at Child, Youth and Family.

If you suspect that the truancy may result from abuse or neglect, escalate the matter by contacting the National Call Centre for Child, Youth and Family on 0508 FAMILY (0508 326 459) or the NZ Police.

Experience shows that prosecution, or sometimes just the possibility of prosecution, is another way to get a student back to regular attendance. It can be a clear reminder for parents about their legal responsibilities, and how important it is for their child to be in school and make the most of the educational opportunities provided. The prospect of prosecution and conviction can be an incentive for parents to act, or seek help and support.

Prosecution

Who can prosecute?

Section 31(7) of the Education Act 1989 states:



Any attendance officer,⁶ a principal, the Secretary, or any person appointed by a board or the Secretary for the purpose may lay information, conduct prosecutions, and take any other proceedings, under this Part.

Under the Education Act 1989 (Part 3),⁷ school boards of trustees have the power to prosecute parents for their children's non-attendance at school.

A change in the Act in December 2008 also gave the Ministry of Education the discretion to prosecute parents for their children's non-attendance. This change does not affect the responsibilities or powers of boards of trustees.

The Ministry is also responsible for prosecuting parents for non-enrolment, since the student is no longer enrolled at a school.

School prosecutions

Boards may appoint anyone deemed appropriate to take the prosecution case on their behalf, for example the school's appointed representative or a truancy officer.

Solicitors

A solicitor would normally be instructed to present a prosecution case in court. Schools can use any local solicitor, but the Ministry strongly encourages the use of a Crown Solicitor. The Crown Solicitors' network is a network of law firms strategically located throughout the country to cover all geographic locations. Crown Solicitors' firms contain specialist prosecutors who hold a warrant from the Solicitor General to carry out this type of work. They are generally bound to charge in accordance with the Crown Solicitors' Regulations 1994. They can help guide schools through the prosecution process. For further information go to:

<http://www.crownlaw.govt.nz>

Costs

A prosecution will probably cost somewhere between \$500 and \$2,000, depending on how much document preparation is involved, the prosecutor's fee and whether or not it is a straightforward case or involves a defended hearing.

You can apply to the Ministry of Education to be reimbursed for the actual and reasonable costs of the prosecution up to an initial limit of \$2,000.⁸ Funding can cover the preparation of court documents and presenting evidence in court on behalf of the board, provided you meet the following criteria:

⁶ Education Act 1989 Section 31 deals with ensuring attendance of students, including the appointment and duties of an attendance officer by a school or group of schools. Duties may include truancy identification and return to school and acting as the informant for the board, in a prosecution.

⁷ For further information, visit www.legislation.govt.nz

⁸ Prior approval may be sought for reimbursement above \$2,000.

- Your school can demonstrate it has followed a case management process.
- Your school has taken action/s to support and assist the student to return to regular attendance.
- Your school has collected and can supply accurate information to be used in evidence (e.g. record of days of unjustified absence and record of any interventions).
- Your school agrees to follow up the prosecution to ensure that the student is successfully reintegrated and re-engages with learning.

Ministry reimbursement is decided on a case-by-case basis.

You can find an application form to apply for reimbursement:

- in Appendix 2
- at www.minedu.govt.nz
- at your local Ministry office.

The Ministry must have approved your application for reimbursement of prosecution costs **before** you send formal warning Letter 3a (i.e. notice of pending prosecution) or Letter 4b (i.e. notice of unsuccessful outcome of Child, Youth and Family Group Conference) of the case management process.⁹

According to the Education Act 1989, any fines from a prosecution are payable to the school board of trustees.

Ministry prosecutions

In exceptional circumstances (decided on a case-by-case basis), where a school is prevented from prosecuting at that time, the Ministry itself will take responsibility for and manage a non-attendance (truancy) prosecution.

However, it is better for schools themselves to carry out prosecutions as they have the information and knowledge required to lay the complaint, as well as the day-to-day legal responsibility for attendance. The school will also have the responsibility to ensure the student's re-engagement into school.

If you believe there are grounds for the Ministry to prosecute a case, contact your local Ministry office as soon as possible.

Keeping records

Prosecution is a legal and formal process. It requires robust record-keeping and documentation. Prosecution cases can be challenged in court if there is incomplete or inaccurate evidence.

If a school decides to take a case to prosecution, the board must maintain and be able to produce the necessary paperwork in court as evidence.

Records should include:

- dates of unjustified non-attendance
- remedial interventions undertaken
- actions taken to facilitate the return of students to school.

Dates for non-attendance are included in the principal's certificate and must be checked by a member of staff within the school for accuracy (see below for more information on this).

When should schools consider prosecution?

In most instances, the policies and processes that schools have in place to follow up on truancy incidents will be enough to identify and address the main underlying causes of the truancy.

If you have followed the case management approach and your interventions, including warning letters, have not resulted in significant improvement in attendance, you may choose to move to the final stage of the process and prosecute the parents for the non-attendance of their child/ren at school.

You have a reasonable basis for considering prosecution when a student's absences:

- are **unjustified** (the student is absent without satisfactory explanation)
- have been **on-going and persistent** (unjustified absence on a number of occasions and irregular attendance continues after support has been offered/given)
- are **parent-condoned** (either tacit or with actual approval and/or parents make little or no attempt to do anything about ensuring attendance of the child at school). School must be confident that this is the cause of absence before considering prosecution.

Any decision to prosecute should also take into account the success or otherwise of any previous attempts to support and encourage a student's return to regular attendance.

⁹ See page 13 for the Stage 1: Pre-prosecution process and Appendix 1 for suggested letter templates.

Once your school decides to prosecute for truancy, you must assemble the relevant documentation that will form the prosecution case: records of dates of unjustified absence and interventions made.

You then make a report to the board of trustees, which in turn must make the decision to prosecute.

Please note: If your school is seeking Ministry of Education financial support in prosecuting, you must apply for reimbursement of costs at this stage.¹⁰

When not to prosecute

In most cases of persistent, unjustified absence, there are a number of contributing factors. Schools need to use their professional judgement when determining where the balance of responsibility lies.

In some cases, truancy will be a symptom of more fundamental, school-level issues, such as school alienation, bullying or poor achievement. You should address these issues through the appropriate pastoral channels, rather than through prosecution of parents.

Truancy may also be due to broader, social or environmental problems, such as youth offending, mental health issues, substance/alcohol abuse, poverty or family dysfunction. Where present, these problems are likely to be 'bigger' than the truancy itself, and prosecution is unlikely to lead to returning a student back to regular attendance. In these situations, it may be more effective to involve Child, Youth and Family or Youth Aid (NZ Police) for a joint community problem-solving approach.

Schools cannot prosecute parents in relation to students aged between 5 and 6 or over 16, as these students are not required to enrol in and attend school (under Section 25 of the Education Act 1989).

Because of the time involved in instigating a prosecution, it is generally recommended that schools avoid prosecution in cases where a student is close to 16. This reduces the possibility of the student leaving school before the prosecution process is complete. While a prosecution could still go ahead, and even be successful, it would be unlikely to achieve the main aim of returning the student to regular attendance.

Prosecution of the parents of a 6-year-old cannot refer to absences from school while the child was aged 5.

Schools may not prosecute in relation to foreign students, who are not legally required to be enrolled at a registered school, or domestic students aged under 7 who live more than three kilometres from the nearest school.¹¹

In the interests of students in the categories described above, schools are still advised to apply case management procedures and interventions.

Withdrawing charges

Charges can be withdrawn during prosecution proceedings.¹² However, once begun, and because it is an action of last resort, the withdrawal of a charge should be considered only in exceptional circumstances. If the graduated process preceding prosecution has not resolved the case earlier, the case is unlikely to be easily resolved if prosecution is delayed or deferred at this stage.

Who to prosecute?

Schools may only prosecute parents or legal guardians.

If a truanting student is cared for by both parents, schools must prosecute both parents on the basis that each parent is equally and jointly responsible for the student's non-attendance. This may include shared care across two homes.

If a truanting student is under the care of a legal guardian who is not a parent, then the legal guardian could be held responsible and prosecuted.

A caregiver is not always the parent or legal guardian. Where a child is not living with parents or legal guardians, prosecution may not be a sensible option, although that will depend on the circumstances.

¹⁰ For further information, contact staff at local Ministry of Education Office.

¹¹ This is an exception to the legal requirement to enrol at a registered school outlined in Section 20 of the Education Act 1989.

¹² Section 36 of the Summary Proceedings Act 1957 allows for the information to be withdrawn by the informant by leave of the court at any time before the defendant(s) has been convicted or sentenced.

The prosecution process

There are three stages in the prosecution process:

1. **Pre-prosecution (pp12–17)**
2. **The court hearing (pp17–19)**
3. **Post-prosecution. (pp19–20)**

These stages are described in further detail in the sections below.

Stage 1: Pre-prosecution

The role of the ‘informant’

The school board appoints an ‘informant’ who is responsible for preparing all the paperwork for the solicitor, ensuring it is collated, correct and complete. The court documentation carries the name of the informant.

If needed, the informant appears in court to assist the prosecution as a witness, possibly giving oral evidence, which may be the subject of cross-examination) for a defended hearing. While they would be welcome to attend a preliminary hearing, their presence would not be strictly necessary.

Anyone can act as informant, provided he or she is formally appointed to this role by the board of trustees, on whose behalf the prosecution is being carried out. The informant must be someone who is familiar with the case, e.g. the District Truancy Services Officer, the school’s own attendance officer, a deputy principal or similar.

To ensure continuity, schools should begin to work with the informant early in the pre-prosecution process.

The role of the solicitor

The school board engages the services of a solicitor, preferably a lawyer from the local Crown Solicitor’s firm, to take the prosecution. The prosecuting solicitor reviews the documentation and finalises the court documents, including the charge, and conducts the prosecution by managing the court proceedings and appearing in court on the school’s behalf.

The solicitor guides the school through the process, advising it at each stage via the school informant of any issues relevant to the school, parent, child/ren or community.

The solicitor files the prosecution charge, called an ‘information’, together with an application to the District Court to seek a dispensation from the court ‘to lay an information’ to take a prosecution for truancy. ***This step is needed because a first offence for truancy is under the \$500 penalty, which normally means a defendant is not required to appear in person. If the dispensation is granted, the defendant will be ordered to actually appear in the District Court.***

An information or charge for a non-attendance offence must be laid in the court **within six months** of the time of the non-attendance.

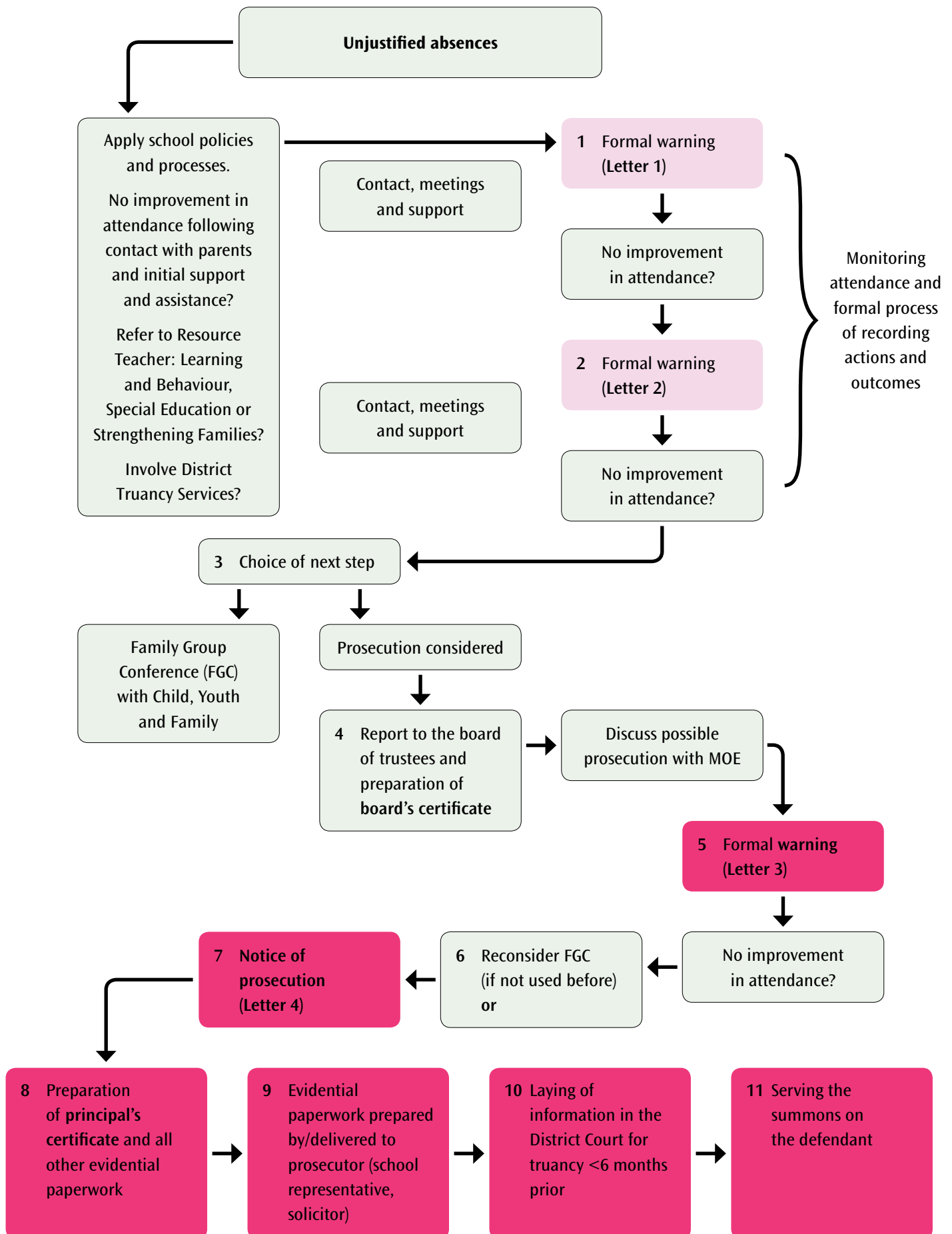
The court provides a date for a first hearing of the prosecution.

A Summons is issued by the court and served on the parent(s). The Summons sets out the date and time the defendant(s) must appear in court. Some additional information must be disclosed to the defendant at this stage of the proceedings, including:

- principal’s certificate
- board certificate
- memo seeking the court’s leave to file an information
- information
- summary of facts
- copy of Section 12(2) of the Criminal Disclosure Act 2008.

The solicitor takes care of these requirements.

Stage 1: Pre-prosecution process



Explanatory notes

(See definition of terms under 'Prosecution documentation' below. Sample templates are in Appendix 1.)

- 1 Formal warning (Letter 1):** There are two possible templates that schools may send at this point. One can be used in situations where you have tried to contact the parent(s) about the unjustified absence but have had no response. The other is for situations where a student's unjustified absence continues after you have had some contact with the parents about the matter.

The purpose of Letter 1 is to arrange a meeting with the parent(s) and the student to discuss the unjustified absence and to support the student's return to regular attendance. The member of staff with primary responsibility for attendance management within the school signs this letter.

Please note: As with all formal school letters, check that the address is correct and that the letter is being sent to the appropriate person/s. Problems can arise if the family has moved or circumstances have changed. Where possible it is recommended that a follow-up phone call is made to confirm receipt of the formal warning. Alternatively, a senior staff member, or a truancy officer may deliver the letter in person, to ensure the parent(s) receive the formal warning.

- 2 Formal warning (Letter 2):** Send this letter if there is no improvement in attendance following the first letter or any action taken as the result of the parent meeting. It escalates the matter by outlining the attendance requirements and prosecution powers contained in the Education Act 1989, while still offering support to return the student to regular attendance.

The school principal or deputy/assistant principal should sign this letter.

- 3 Choice of next step:** By this stage, you should have had sufficient contact with the student's parent(s) to identify the causes for the unjustified absence and so be able to judge which intervention path is most appropriate – prosecution or a Family Group Conference co-ordinated through Child, Youth and Family.

Please note: If you decide to make a **referral** to a Care and Protection Co-ordinator through Child, Youth and Family, the prosecution process should not go any further until this referral has been worked through.

- 4 Report to board of trustees and preparation of board's certificate:** Before you can send the third and final warning letter, your board of trustees will need to be 'briefed' on the details of the truancy and give its assent to the prosecution being carried out. The report to the board should also identify the person who will act as informant on the board's behalf, so that the informant can then be formally appointed and a board certificate prepared.

Because the board must pass a resolution before producing this certificate, ideally you should present the report to trustees during a regular board meeting. If this is not possible, boards can pass resolutions by fax or email; board members must indicate their agreement by either returning a signed fax or an email that includes their electronic signature.

Note that the board will need to formally exclude the public (commonly referred to as being 'in committee') to protect the privacy of the student and parents.

Because of the time pressure created by the 6-month limitation period which applies to laying charges, a permanent delegation can be put in place. This means the board does not have to convene to pass a formal resolution each time a school wants to commence a prosecution. On the other hand, because prosecution is a serious matter, boards may prefer to convene each time.

If you intend to apply to the Ministry of Education for reimbursement of prosecution costs, the Ministry must have approved your application before the board sends Letter 3a or Letter 4b.

- 5 Formal warning (Letter 3):** Send this final letter as a formal notice of the intention to prosecute. It allows the parent(s) five days from the date of the letter to respond, on the understanding that non-response [on the part of parent(s)] will result in a charge being laid.

As the prosecution is carried out on the board's behalf, a representative of the board (preferably a trustee delegated the task) should sign this final warning letter.

Experience from community initiatives such as ROCK ON indicates that having a NZ Police officer deliver a letter at this stage can be an effective trigger to effect a change.

- 6** If you did not consider a Child, Youth and Family-co-ordinated Family Group Conference earlier, it may be an appropriate intervention action at this point. You will need to assess whether or not it is likely to effect a desirable solution.

- 7 **Engaging a solicitor (Letter 4):** This letter gives notice that the matter has now moved to prosecution and a summons will follow. The process is set out below. Don't be daunted – your solicitor will work through the issues with you.

Once you have sent Letter 4, your solicitor must prepare an application to the court for dispensation under the Summary Proceedings Act to lay an information (i.e. commence a prosecution by charging a person). This dispensation is a departure from the ordinary process of charging a person and is necessary because of the nature of the charge and penalty. This is part of the process of preparing and laying an information.

The chief consequence of laying an information is that the defendant will need to appear in the District Court (following being summoned) to resolve the charge.

- 8 **Principal's certificate and all other evidential paperwork:** The non-attendance dates specified in the principal's certificate must be cross-checked against either:

- the school's manual attendance register; or
- in situations where an approved electronic attendance register is in use, a print-out of the student's attendance record covering the whole period of and including the unjustified absences.

Any number of dates¹³ can be included in the principal's certificate and used as the basis for the prosecution, as long as they are included in the period covered in the three warning letters and as long as they are within the six-month time limit prescribed by the legislation for laying an information.

Once the principal's certificate has been completed, it can be used with the record of interventions as the basis for the three forms of evidential paperwork necessary for court – the **Summary of Facts, Brief of Evidence and an Affidavit of Formal Proof**. The informant appointed by the board (and named in the board's official certificate) should complete this paperwork.

Please note: If an Affidavit of Formal Proof is required, your solicitor will guide you through the process.

- 9 **Evidential paperwork prepared by/delivered to prosecutor (e.g. school representative, solicitor):** This is the last point at which the elements of the charge will be reviewed before the charge is laid. The solicitor checks that the paperwork (the Summary of Facts and Brief of Evidence) meets court standards and ensures there are no discrepancies in the evidence.

- 10 **Laying of information:** This is the term given to the process of laying a charge in the District Court. The informant completes this process and must state on oath that he or she has just cause to suspect that the parents have committed an offence under Section 29 of the Education Act 1989. This is done in the form of an information, which is essentially a charge sheet. The information is prepared in conjunction with the solicitor. The solicitor also prepares the application for a dispensation to file the information in the court.

The form of an information is prescribed by Schedule 2 of the Summary Proceedings Act (below):

I, [Full name], of [Address, occupation], say on oath that I have just cause to suspect, and do suspect, that [Full name], of [Address, occupation], [set out the nature of the offence], being an offence punishable summarily [Add section and statute applicable, i.e., "Section 29 of the Education Act 1989"]

The information is then signed and sworn by the informant before a court registrar. Once sworn, the information must be filed in the court that is nearest to either the school where the student is enrolled (in most cases, this will also be the court where the information was sworn) or nearest the address of the defendant(s), if they live in a different area. Ordinarily, it will be appropriate to file the information in the court nearest the school. The solicitor guides this process.

The parent(s) are known as the 'defendant(s)' from this point in the process onwards.

Because of the resources available to them (and the strict form and substance requirements), the solicitor who will conduct the prosecution usually prepares the information, which can then be returned to the informant so that it can be sworn.

¹³ Not all dates of non-attendance have to be included. There may be periods of improvement following interventions or warning letters, so if/when the student's attendance deteriorates again and the case is referred back into the case management process, it may only be the more recent incidents of truancy which are referred to in the prosecution. However, your solicitor will want to know about all incidents to address the court on the full extent of the problem.

11 Serving the summons: As part of the process of laying an information, the court issues a summons – this document compels the defendant's presence at court on a specific date and time (the first hearing). Once issued, this summons needs to be served on the defendant in one of the three ways prescribed by the Summary Proceedings Act 1957 for this type of proceeding. The solicitor can co-ordinate this. The summons can be:

- personally delivered to the defendant, e.g. by a senior staff member, truancy officer, NZ Police officer or (more commonly) by a process server instructed by the solicitor; or
- left at the defendant's home with a member of his/her family who appears to be aged 18 or over; or
- sent by registered mail to either the defendant's home or work address.¹⁴

Once the summons has been served, an Affidavit of Service should be prepared. The prosecutor can use this to prove that service has been effected. If the defendant fails to appear at court on the appointed day, the Affidavit of Service will be handed up to the judge. Once satisfied that the defendant was served a reasonable time before the hearing date, and has failed to make the required appearance, the judge can proceed in the defendant's absence. An Affidavit of Formal Proof is then submitted to prove the elements of the charge. Your solicitor will liaise with you at this point to ensure the documentation is complete. Alternatively, the judge can issue a warrant to arrest the defendant and compel their attendance to answer the charge.

Please note: Certain information needs to be supplied to the defendant at the time the prosecution commences to satisfy disclosure obligations imposed on informants in criminal proceedings. This is usually the time at which the information is filed and the summons served. The information includes (but need not be limited to):

- a Summary of Facts – this sets out the factual basis for the charge faced and the maximum penalty for which the defendant will be liable in the event that he or she is convicted
- a summary of the defendant's right to apply for further information under Section 12(2) of the Criminal Disclosure Act 2008 (it is convenient to simply supply a copy of the text of that section, coupled with the advice that the defendant is entitled to request the listed information)
- a list of any previous convictions that the defendant has accrued (the board will be exempt from this requirement as it will almost certainly not have access to this information).

At this point, it may also be convenient to disclose copies of the warning letters and the principal's certificate although, technically, these do not have to be disclosed until a later stage in the proceedings.

The solicitor will manage this disclosure process in most cases.

¹⁴ See Section 24 of the Summary Proceedings Act.

School prosecution documentation

(See templates and examples in Appendix 1.)

School's case management records

Record of truancy and prosecution cases

This is a suggested record of all cases of truancy that have been through the school's case management process, notes at what stage cases are resolved and which escalate to prosecution. It could provide data over time on the school's truancy reduction goals.

Pre-prosecution checklist

This could be used to record stages in the process for individual students, until the point where the case is resolved. Ideally, this is the first page in a student file as he or she enters the case management process.

Pre-prosecution paperwork

Formal warning (Letter 1)

Formal warning (Letter 2)

Formal warning (Letter 3)

Notice of moving to prosecution (Letter 4)

Keep copies of these on file.

Record of interventions: This should provide the date and a brief summary of all activities carried out by (or on behalf of) the school to try to support a student's return to regular attendance.

Board's certificate: This must contain the board's official stamp or seal and be signed by at least two trustees. It names an appointed person as having the authority to lay an information and conduct a prosecution on the board's behalf.

Principal's certificate: This provides all the evidence necessary to prove a charge. It is provided to the parents at the time that the summons is served and is used as the basis for all evidential paperwork necessary for court.

Evidential paperwork for court

Summary of Facts: The prosecutor reads this aloud to the court in cases where the defendant pleads guilty. It provides the factual basis for sentencing. It includes a brief narrative summary, which is based on information contained in the principal's certificate and the record of interventions.

Affidavit of Service: This is submitted to the judge in cases where a defendant fails to appear at court. This is evidence given on oath and needs to be signed and sworn before an appropriate person (e.g. a solicitor, court registrar or justice of the peace).

Affidavit of Formal Proof: If the defendant fails to appear (and the Affidavit of Service is submitted), this document is submitted to the judge to prove the charge in the defendant's absence (and will be treated like oral evidence). Like the Affidavit of Service, it is signed and sworn before an appropriate person and sets out the evidence against the defendant. It needs to be sworn by the person who would otherwise have given oral evidence in the matter.

Brief of Evidence: This is a guide for the prosecutor conducting the case. In the event of a defended hearing (i.e. where the defendant has pleaded not guilty), at which oral evidence will be called, the prosecutor asks the witness a series of open-ended questions, which are referred to in the witness's 'Brief of Evidence'. The content of the brief will be largely the same as the Summary of Facts, and will be based on the principal's certificate and the record of interventions. It is not a complex or daunting process to give evidence, and the school's solicitor will guide the witness through it.

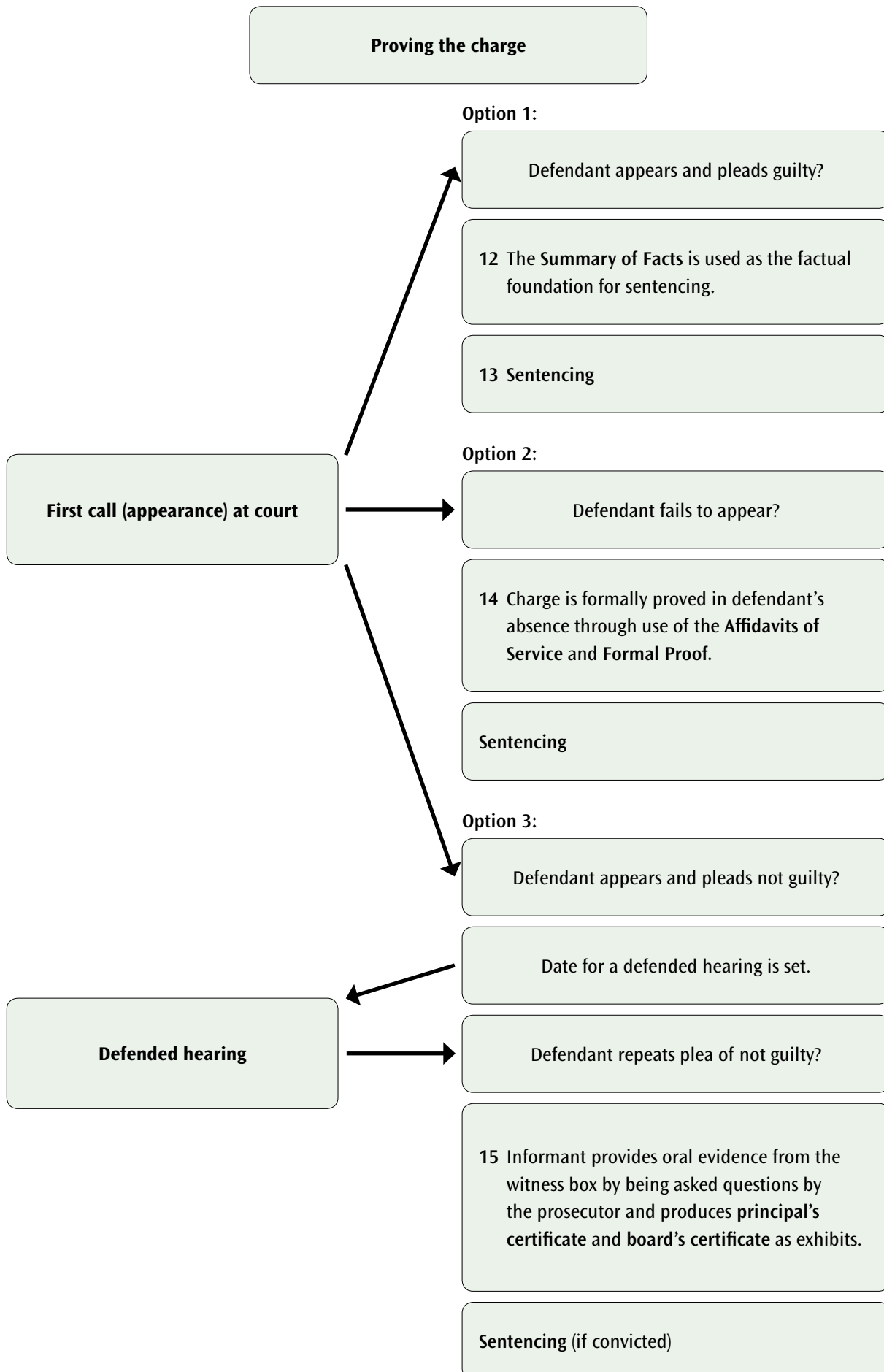
Stage 2: The court hearing

The school's solicitor as prosecutor, and also the school's informant, in appropriate cases, attends court for the hearing(s). Your solicitor will guide you on this step.

The paperwork needed for the hearing includes:

- principal's certificate
- board certificate
- Summary of Facts
- Affidavit of Service
- Affidavit of Formal Proof
- Brief of Evidence.

Stage 2: The court hearing process



Explanatory notes

12 Summary of Facts: If the defendant pleads guilty at the first court hearing, the Summary of Facts is read to the court and forms the factual basis for sentencing. No further evidence need be provided in this case.

13 Sentencing: The sentencing outcome will depend on the circumstances of the case. However, if the defendant pleads guilty at the first hearing, the most likely outcome is that he/she will be convicted and fined an amount up to \$300 (the maximum penalty is a fine not exceeding \$30 for each day of non-attendance, up to a maximum of \$300).

Alternatively, the judge may delay the sentencing to a future date to give the defendant an opportunity to improve his/her child's attendance. In this case, the original charge will stand, but the prosecutor will have an opportunity to present any new information (such as evidence of improved attendance) before the judge passes his/her sentence. The prosecutor can also modify the sentencing recommendation if attendance has improved between hearings. If attendance has improved, a conviction and discharge may be appropriate.

14 Affidavits of Service and Formal Proof:

If the defendant fails to appear at a hearing, the Affidavits of Service and Formal Proof can be used to prove a charge in the defendant's absence. If the judge is satisfied that the defendant was served with the summons and has failed to appear (on the evidence contained in the Affidavit of Service) he/she will accept the informant's evidence contained in the Affidavit of Formal Proof as if it had been given orally. If satisfied that the evidence proves the elements of the charge, the judge can then convict and sentence the defendant in his/her absence. Alternatively, a warrant to arrest the defendant can be issued to compel his/her attendance to answer the charge.

15 Defended hearing: If the defendant appears at court and pleads not guilty to the charge, the informant will need to prove the charge by providing oral evidence. The informant does this from the witness box by being asked questions by the prosecutor. In the course of giving evidence, the informant will also be asked to produce the board's certificate and principal's certificate as exhibits, which can then be passed to the judge.

The defendant (or his or her solicitor, if one is instructed) would then have the right to cross-examine the informant.

If the judge is satisfied that the informant has established that there is a case to answer, and the defendant offers no suitable defence, the

case will be proved beyond reasonable doubt and the defendant convicted. The judge can then proceed to sentence the defendant or delay the sentencing to a future date to allow the defendant an opportunity to improve his/her child's attendance.

Stage 3: Post-prosecution

16 Arrangements for return to school



17 Ongoing monitoring and follow up of student's attendance to check improvement of attendance and engagement.

Explanatory notes

16 Arrangements for student's return to school:

These include actions such as developing an action plan and attendance/behaviour contract, and making changes to the student's programme.

17 Ongoing monitoring of student's attendance:

It is a good idea to keep a close record of the attendance of the student whose parents were prosecuted for at least three months following prosecution. Prosecution may or may not prove a successful intervention to improve attendance. See [section 3] for suggested templates for monitoring attendance.

Outcomes and follow-up post-prosecution

Outcomes	Follow-up action
Student returns to regular attendance and engages with education	No further action
Student has mostly better attendance and some engagement with education	Identify if additional support or supervision needed Identify if a change to the student's programme is desirable
Student has irregular attendance and/or some truancy continues	Put in place further support and provide supervision. Repeat case management. Consider prosecuting again.

Outcomes	Follow-up action
Student is in alternative education, has early-leaving exemption, moves to youth training provider	<p>Follow up.</p> <p>Assess if the alternative pathway is working for the student.</p> <p>Identify any better options available.</p> <p>Plan where to next.</p>
Student shows no improvement in attendance, or leaves school and is non-enrolled	<p>Consider:</p> <ul style="list-style-type: none"> • making changes to student's learning programmes • repeating case management • prosecuting again • holding a Child, Youth and Family Care and Protection Group Conference • prosecuting the parents for non-enrolment.



Appendix 1: Templates and example documents

(Please adapt and customise these for your own needs)

Templates

Encouraging attendance

Letter/Newsletter/Website notes to parents/students about the importance of attendance at school

[School address]

[Date]

Dear [parents' names]

SCHOOL ATTENDANCE IN 20xx

_____ School is committed to ensuring that all of our students get the most out of their education, and wants to support our students to maintain regular attendance. Students who attend school regularly learn more and achieve better results.

As parents, you have an important role in ensuring that your child attends school whenever it is open, unless there is a good reason for his/her absence. Acceptable reasons for absence include sickness or serious family circumstances, such as bereavement. Where there is a good reason for absence, please contact the school on _____ to let us know as soon as possible.

Your role in ensuring your child's regular attendance is so important that if you allow your child to miss school without a valid reason, you can be prosecuted under the Education Act 1989.

While _____ School does not want to prosecute any parent for their children's absence, we do take regular attendance seriously. We will be monitoring all unexplained absences and parents may face prosecution in cases where their child's unexplained absences are persistent.

If students frequently miss school without an explanation being provided, we will be contacting parents to request a meeting and to work with you to encourage better attendance. If the unexplained absences persist, we will send a formal warning letter, and may involve other agencies, such as the District Truancy Service, to follow up on the reason for the absence. If ongoing unexplained absence continues, a formal notice of prosecution and court action may follow.

Please work with us to ensure that prosecutions can be avoided and help support your child to attend school regularly this year.

Attendance is important and every day counts.

RECORD OF CASE MANAGEMENT ACTION

[illegible]

(If a second or third letter etc is not sent, because interventions have worked and the child has returned to more regular attendance, put NFA (no further action) in the appropriate column, and indicate in the last column what assisted the process to be discontinued, e.g. "An informal meeting at the school between parents, student, deputy principal: action plan completed and implemented" or "FGC arranged and successful outcome resulted".)

Case management/Pre-prosecution checklist

(Use as front page of student file; attach letters and reports etc.)

Student:	
Date completed	Action
Ongoing	Record of unjustified absences documented
Ongoing	Record of interventions, date and nature
	Formal warning Letter 1 sent, signed by member of staff with responsibility for attendance management
	The outcome of any contacts made or meetings held are recorded, along with any associated interventions (i.e. involvement of District Truancy Service)
	Formal warning Letter 2 sent, signed by principal or deputy/assistant principal
	The outcome of any contacts made or meetings held are recorded, along with any associated interventions
	Report presented to the board of trustees
	Board's certificate prepared, signed by at least two trustees
	Formal warning Letter 3 sent, signed by board chairperson
	The outcome of any contacts made or meetings held are recorded, along with any associated interventions.
	Principal's certificate prepared (with dates of non-attendance cross-checked)
	Letter 4 sent, notifying intention to move to prosecution, signed by board chairperson
	Evidential paperwork prepared (Summary of Facts, Brief of Evidence, Affidavit of Service)
	Evidential paperwork delivered to prosecuting agent
	Information laid in District Court
	Summons served (along with copies of warning letters and principal's certificate)
	Court case and outcome

Formal warning Letter 1a

(Could be used in situations where the school **has already had contact** with the parents about the unjustified absence.)

Date _____

Dear _____

Further to our conversation on [include date of previous meeting/phone conversation], I am writing to advise that your child, [student's name], has again been absent from school without a satisfactory explanation on [specific date(s) of non-attendance].

As noted on [include date of previous meeting/phone conversation], the school considers all forms of absence without explanation to be unjustified and is required by law to follow up on this absence(s).

The school is concerned that [student's name]'s ongoing absence will hinder [his/her] progress and achievement at school. We would like to work with you to support him/her to return to regular attendance.

Please contact me on [insert number] to arrange a time to meet to discuss this further in the coming week.

Yours sincerely

[to be signed by staff member with responsibility for attendance management]

Formal warning Letter 1b

(To be used in situations where the school has attempted to contact the parents about unjustified absence but has had no response.)

Date _____

Dear _____

I am writing to advise that your child, [student's name] has been absent from school without explanation on [specific date(s) of non-attendance].

The school has attempted to contact you on [include date(s) of attempted contact] to discuss the absence(s), but has received no response. Please note that [insert name of school] considers all forms of absence without explanation to be unjustified and is required by law to follow up on this absence.

Ongoing absence will hinder [student's name] progress and achievement at school. We would like to meet with you to identify the reasons for the absence and to support [student's name] return to regular attendance.

Please contact me on [insert number] to arrange a time to meet to discuss this further in the coming week.

Yours sincerely

[to be signed by staff member with responsibility for attendance management]

Formal warning Letter 2

Date _____

Dear _____

This letter is to advise that your child, [student's name] has been absent from school without a satisfactory explanation on [specific date(s) of non-attendance].

The school has already met with you to discuss [student's name]'s irregular attendance on [insert date of meeting], and is concerned to note that this meeting has not resulted in improved attendance.

The Education Act 1989 requires all children and young people between the ages of 6 and 16 to attend school on each day of the school year, and failure to comply with this can result in prosecution and a fine of up to \$300 under Section 29 of the Act.

Attached to this letter is a copy of Sections 20, 25 and 29 of the Education Act 1989 for your reference.

It is important that [student's name] attends school regularly so that [his/her] learning and progress at school remains on track. [Insert name of school] is committed to helping [student's name] to return to regular attendance and we are keen to work with you to support this commitment.

Please contact me urgently to discuss the matter further on [Insert number].

Yours sincerely

[To be signed by either the principal or deputy/associate principal]

Penalties of Failure to Attend

20. New Zealand citizens and residents between 6 and 16 to go to school

- (1) Except as provided in this Act, every person who is not a foreign student is required to be enrolled at a registered school at all times during the period beginning on the person's sixth birthday and ending on the person's 16th birthday.
- (2) Before a child's 7th birthday, the child is not required to be enrolled at any school more than 3 kilometres walking distance from the child's residence.

24 Penalty for failure to enrol

- (1) Where the parent of a person required by this Act to be enrolled at a registered school fails or refuses to ensure that the person is enrolled at a registered school, the parent commits an offence, and are liable on summary conviction to a fine not exceeding \$3,000.
- (2) The payment of a fine in respect of a conviction for an offence against subsection (1) is not a bar to proceedings for a further such offence.

25 Students required to enrol must attend school

- (1) Except as provided in this Act, every student of a registered school (other than a correspondence school) who is required by section 20 to be enrolled at a registered school shall attend the school whenever it is open.
- (2) Every Board shall take all reasonable steps to ensure that students who are required by subsection (1) to attend the school whenever it is open do so.
- (3) For the purposes of this section, a student attends a school on any day if, on the day,—
 - (a) It has been open for instruction for 4 hours or more; and
 - (b) The student has been present for 4 hours or more when it was open for instruction.

29 Penalty for irregular attendance

- (1) Every parent of a person who—
 - (a) While enrolled at a registered school, does not attend as provided in section 25; or
 - (b) While enrolled at a correspondence school, does not do the work of the course in which the student is enrolled,—

commits an offence, and is liable on summary conviction to a fine not exceeding an amount calculated at the rate of \$30 for every school day for which the offence has occurred.
- (2) Notwithstanding subsection (1), a fine imposed for an offence against that subsection shall not exceed \$300 for a first offence against the subsection (or section 120(1) of the Education Act 1964), or \$3,000 for a second or subsequent offence.
- (3) The imposition of a penalty under this section does not affect or restrict the operation of any provision of the Children, Young Persons, and Their Families Act 1989.

Formal warning Letter 3a

Date _____

Dear _____

This letter is to formally advise you that the board of trustees of [insert name of school] is considering taking court action against you, pursuant to Section 29 of the Education Act 1989, if your child, [insert student's name], has not returned to regular attendance or provided a satisfactory reason for any continued absence by [specify date five days from the date of the letter].

The school has written to you on [insert date of first letter] and [date of second letter] to advise of [student's name] persistent, unjustified absence and has met with you on [insert dates of any meetings with the parents] to try to resolve the matter. I note that none of these activities have resulted in an improvement in [student's name] attendance, and [student's name] is now recorded as having been absent from school on a total of [insert total number of absences] occasions.

This matter will be reviewed on [repeat date included above], and if no improvement in attendance is noted, the board of trustees will proceed with progressing this prosecution.

Please note that you may be liable on conviction to a fine of up to \$300 plus court costs.

Yours sincerely

[To be signed by the chairperson of the board of trustees]

Formal warning Letter 3b

(Family Group Conference)

Date

Dear _____

The board notes with concern that [student name]'s attendance remains unsatisfactory.

The school has contacted you in the past expressing concern regarding [student name]'s attendance at school. Please refer to letters sent on [give dates].

The Education Act 1989 requires all children and young people to be enrolled and attending school from their sixth to 16th birthday whenever the school is open.

On behalf of the board of trustees, I must inform you that the board, under the Children Young Persons & their Families Act 1989 has now referred this matter to a Care and Protection Co-ordinator at Child, Youth and Family Services for the purpose of convening a Family Group Conference to address this concern.

Should you wish to discuss this matter, please contact [name, phone number].

Yours sincerely

Principal/Board chairperson or secretary

Letter 4a

Date _____

Dear _____

NOTICE OF PROSECUTION

As there has been no further progress regarding [name of student]'s attendance at school the board of trustees has no option but to pursue a prosecution through the court for the non-attendance of your [son/daughter] [name of student] at _____ School.

The matter has now been forwarded to [the school representative] [our solicitor] for action. A summons for you to appear in court will be issued in due course.

Yours sincerely

Principal/Board chairperson or secretary

Letter 4b

(Following Family Group Conference)

Date _____

Dear _____

NOTICE OF PROSECUTION

As a result of the Family Group Conference held for [name of student] on [date], a plan was implemented.

The board of trustees has noted that conditions of this plan are not being met, namely [insert details].

As there has been no further progress the board of trustees has no option but to progress a prosecution against you for the non-attendance of your [son/daughter] at _____ School.

The matter has now been forwarded to [the school representative] [our solicitor] for action. A summons for you to appear in court will be issued in due course.

Yours sincerely

Principal/Board chairperson or secretary

Example documents

Record of interventions

A record of interventions provides a narrative summary of the school's responses to the truancy throughout the pre-prosecution process. It provides the information to the board to help them decide whether to pursue a prosecution. It forms the basis for much of the information that is later included in the Summary of Facts and Brief of Evidence, if the case proceeds to court. It is also required with an application to the Ministry of Education for reimbursement of costs, if the board decides to prosecute.

Although there is no set format for a record of interventions, it is important to include (as a minimum):

- the date of each pastoral response to the truancy
- a brief description of the response or activity (i.e. a telephone conversation or visit to the home by a District Truancy Service Officer, meeting with a school counsellor etc.)
- a brief summary of the outcome.

The following example case has been developed to serve as the basis for the documentation included in this section. The names and details are fictitious, but the format should be used as a guide for your own paperwork.

The example case includes:

- information about the child and list of absences
- a description of individual responses by school with dates
- the board's certificate that appoints a person to lay information and conduct the prosecution
- the principal's certificate – usually a letter beginning 'To Whom it May Concern...', setting out the facts
- a Summary of Facts – to be used when a defendant pleads guilty
- an Affidavit of Service – to be read by the judge if defendant doesn't appear
- a Brief of Evidence – information that is read aloud when the defendant pleads not guilty.

(You will need to include the first four and any of the other three that fit the particular circumstances.)

Example:

Sam Brown is a 10 year-old student of Kiwi Park Primary School. He lives with his parents, Anna and Tom Brown at 7 Home Street, Waitea.

The school principal is Sally Potts and the local District Truancy Service Officer is Adam Scott.

Sam has been enrolled at Kiwi Park Primary School since 31 January [year] and has been absent from school on the following dates:

[February 3, 4, 14, 15, 17, 18
March 7, 10, 11, 31
April 4, 11, 12, 13, 20, 21]

Date	Description of response
4 February	Home visit by District Truancy Service Officer; mother advised that Sam had been “too tired” to attend school.
7 February	Letter 1 sent from school; no reply from parents.
15 February	Home visit by District Truancy Service Officer; mother advised that Sam had stayed home on 14 and 15 February to help look after younger brother.
18 February	Home visit by principal and District Truancy Service Officer; both parents at home and advised of need to ensure regular attendance. They gave a commitment that they would ensure Sam’s regular attendance.
7 March	Visit from District Truancy Service Officer; told that Sam was “too tired” to attend school.
11 March	Letter 2 sent from school; parents agreed to attend meeting with principal and school counsellor to discuss ongoing attendance concerns.
14 March	Parents attended meeting with principal and agreed to a visit from the school counsellor to look at the reasons for Sam’s absence.
16 March	Community nurse visited home; advised that Sam was healthy and able to attend school.
4 April	Home visit by District Truancy Service Officer; mother advised again that it was her and her husband’s responsibility to see that Sam attended school.
18 April	Board decision to pursue prosecution.

Board's certificate

The board's certificate is issued under Sections 31(7) and 31(8) of the Education Act 1989, which enable a board to appoint a person to lay information and conduct a prosecution on its behalf. For court purposes, the board is still identified as the 'informant' in the evidential paperwork, but it is the person named in the certificate who has responsibility for appearing at court (and proving the charge, as necessary) as the board's agent.

Because the board's certificate must include the board's common seal, it cannot be prepared without the board first passing a resolution.

As a matter of convenience, it is recommended that the resolution to prepare this certificate is passed by trustees during a regular board meeting. However, if this is not possible, boards can also pass resolutions by fax or email, provided all board members indicate their agreement to the resolution by either returning a signed fax or an email that includes their electronic signature. As noted earlier, it is possible for this certificate to have an enduring nature, to avoid the need for a resolution to be passed each time a prosecution was to be implemented.

There is no set format for this certificate; however, it is **recommended** that you follow the same text supplied below.

Example:

xxx board of trustees' seal xxx

Pursuant to sections 31(7) and 31(8) of the Education Act 1989, the [Kiwi Park Primary School] board of trustees hereby appoints [Adam Scott, Waitea District Truancy Service Officer] to lay information and conduct prosecutions in respect of non-attendance offences pursuant to section 29 of the same Act.

Principal's certificate

The principal's certificate allows the principal to provide all the evidence necessary to prove a charge of non-attendance without having to personally appear in court.

To this end, it confirms each of the following elements of the charge, that:

- the student is enrolled at a registered school
- the student is aged between 6 and 16
- the student failed to attend on the particular dates noted

- the school was open for instruction on each of the dates of the student's non-attendance
- the absence was not justified
- the defendant/s is the parent/s of the student and that he/she lives at the specified address.

The certificate can be written in the form of a letter, beginning with the date and "To Whom it May Concern" and **must** include the following text:

(Please note that names and details are fictitious and you should ensure that all names and details are changed in your document.)

Example:

[Date]

To Whom it May Concern

Pursuant to sections 27 and 33 of the Education Act 1989, I certify that:

- (a) [Sam Brown] has been enrolled at [Kiwi Park Primary School], which is a State school and therefore a registered school, from [31 January (year)] to the present date;
- (b) [Sam] is aged [10];
- (c) [Sam] failed to attend school on [February 3, 4, 14, 15, 17, 18, March 7, 10, 11, 31 and April 4, 11, 12, 13, 20, 21 2005];
- (d) [Kiwi Park Primary School] was open for instruction on each of the dates noted above at (c);
- (e) [Sam's] absence was not justified; and
- (f) [Sam's] parents are [Anna and Tom Brown.] Their address is [7 Home Street, Waitea.]

[Sally Potts]
PRINCIPAL

Please note that the dates of non-attendance specified in the principal's certificate must be correct, and that any discrepancies in the dates must be resolved before the principal's certificate is completed. Watch for the occasional public holiday such as Queen's Birthday weekend or a regional Anniversary day. These dates are often the reason why absence dates are queried and the document's credibility put into question during a court case.

In order to ensure that the data entered in the principal's certificate is correct, the Ministry recommends that all non-attendance dates are cross-checked against either:

- the school's manual attendance register [E19/1]; or
- the school's original, manually prepared source documents in cases where an approved alternative (i.e. electronic) attendance register is in use.

Summary of Facts

The Summary of Facts combines the details provided in the principal's certificate with some of the information provided in the record of interventions. It is used as a factual basis for the charge and sentencing in cases where the defendant(s) has/have pleaded guilty.

Use the following example as a guide to both structure and content when completing your own summaries.

Example:

Caption summary

[date]

Board of trustees

[Kiwi Park Primary School]

Name:[Anna Brown]

Address:[7 Home Street, Waitea]

Occupation:[Painter]

Together with:

Name: [Tom Brown]

Address:[7 Home Street, Waitea]

Occupation: [Truck driver]

Charge:

Parent/s of non-attending student

Truancy: Section 29 Education Act 1989

Penalty:

\$30.00 for every day not attended

Maximum of \$300.00

Summary of Facts

Sam Brown is 10 years of age and has been enrolled at Kiwi Park Primary School, which is a State school and therefore a registered school, since 31 January [year]. Sam's parents are Anna and Tom Brown.

During February to April [year], Sam failed to attend Kiwi Park Primary School on 16 separate occasions when the school was open for instruction. None of these absences were explained to the satisfaction of the principal and are therefore considered unjustified.

The specific dates of non-attendance were as follows:

February [year] 3, 4, 15, 17, 18

March [year] 7, 10, 11, 31

April [year] 4, 11, 12, 13, 20, 21

Regular attendance at school is important for student's learning and achievement.

The school has attempted to resolve Sam's non-attendance on several occasions, employing several different responses.

The school has arranged for the local District Truancy Service Officer, Mr Adam Scott, to carry out home visits on five occasions – 4 February, 15 February, 18 February, 7 March and 4 April. Mr Scott has attempted to identify the cause of the truancy and to encourage the parents to ensure Sam's regular attendance. Mr Scott was also accompanied by Ms Sally Potts, the school principal, on a home visit on 18 February.

Throughout this period, the school also sent a series of three letters to Sam's parents advising of the need for regular attendance and of the possibility of prosecution if Sam's attendance did not improve. The letters were sent on 7 February, 11 March and 18 April and did not result in any sustained improvement in attendance.

On the basis of the information summarised above, the Kiwi Park Primary School board of trustees is satisfied that Sam's absence is parent – condoned.

At the time that these proceedings were commenced, Sam had not enrolled at any other school.

The defendants have not previously appeared before the court for similar offending.

Pursuant to Section 35 of the Education Act 1989, any fine imposed is to be paid to the board of trustees on whose behalf these proceedings were commenced. In this case, the fine is payable to:

Board of trustees
Kiwi Park Primary School
1 School Street
WAITEA

Affidavit of Service

The Affidavit of Service is a sworn record of the fact of service. In situations where the defendant fails to appear, it is used to satisfy the judge that the defendant was served with the court summons, and was thus aware of when and where the first hearing was, and his/her requirement to attend. The court can then proceed to a formal proof hearing, at which time evidence on affidavit will be accepted (the Affidavit of Formal Proof).

Please use the following example as a guide to both structure and content when completing summaries. Note that the example assumes a process server has been used to effect service.

Example:

IN THE DISTRICT COURT

HELD AT [MANUKAU]

BETWEEN

**[KIWI PARK PRIMARY SCHOOL
BOARD OF TRUSTEES]**

Informant

AND

[ANNA AND TOM BROWN]

Defendants

AFFIDAVIT OF SERVICE

I, PROCESS SERVER, Process Server of Wellington swear:

- 1. That is my full name and I am employed by Tony Smith Investigations Ltd.**
- 2. Part of my duties include document service.**
- 3. After receiving instructions from [] of Luke Cunningham & Clere, Solicitors, Wellington, I served Name with summonses, a true copy of which is annexed hereto and marked "A".**
- 4. Name was served at the given address of address on day date 2009 at time.**
- 5. Name acknowledged his/her identity and accepted the documents.
The defendant is not known to me personally.**

SWORN by the said)
PROCESS SERVER)
at Wellington this day of)
2010)
before me:)

A Solicitor of the High Court of New Zealand

Affidavit of Formal Proof

As with the Summary of Facts and the Brief of Evidence, the Affidavit of Formal Proof is based on a combination of the principal's certificate and the record of pastoral interventions. This is submitted to the judge to formally prove the charge in cases where the defendant fails to appear at a court hearing.

Please use the following example as a guide to both structure and content when completing summaries. Note that names and details are fictitious; all names and details should be changed for completed document.

Example:

IN THE DISTRICT COURT

HELD AT [MANUKAU]

BETWEEN

[KIWI PARK PRIMARY SCHOOL
BOARD OF TRUSTEES]

Informant

AND

[ANNA AND TOM BROWN]

Defendants

AFFIDAVIT OF [ADAM SCOTT]

AFFIDAVIT OF [ADAM SCOTT]

I, Adam Scott, Waitea District Truancy Service Officer, swear:

1. That I am authorised by the Kiwi Park Primary School Board of Trustees to lay information and to conduct a non-attendance prosecution, pursuant to sections 31(7) and 31(8) of the Education Act 1989. A certificate sealed by the Kiwi Park Primary School Board of Trustees authorising this appointment is attached as Section 3 "A."
2. That on 4 February [year] I became aware that Sam Brown had failed to attend Kiwi Park Primary School. As requested by the school, I visited Sam's home on this date to attempt to identify the reason for the absence.
3. That I carried out four further home visits in response to Sam's persistent absence on 15 February, 18 February, 7 March and 4 April. On 18 February I was also accompanied by the principal of Kiwi Park Primary School, Ms Sally Potts. On each of these occasions, I advised the parents of the need for Sam to attend school regularly.
4. That three letters have been sent to Sam's parents by Kiwi Park Primary School on 7 February, 11 March and 18 April to encourage Sam's parents to contact the school to discuss Sam's persistent absence. A formal meeting was also held between the principal, school counsellor and Mr and Ms Brown on 14 March.
5. None of these pastoral interventions resulted in a sustained improvement in Sam's attendance.
6. During the period spanning 4 February (year) to 21 April (year), Sam was absent from school on 16 separate occasions when the school was open for instruction. The principal of Kiwi Park Primary School has certified that Sam's absence on these occasions was not justified, and a copy of this certificate is attached as Section 3 "B."

SWORN at [Waitea] this _____ }

day of _____ }

before me: _____ }

[A Solicitor of the High Court of New Zealand]

Brief of Evidence

The Brief of Evidence is also based on the principal's certificate and record of interventions and presents the same information included in the Summary of Facts, albeit in a different format. This information in the brief is given in oral evidence by the witnesses through questioning by the prosecutor at a defended hearing (where the defendant has pleaded not guilty to the charge).

The following example should be used as a guide to both structure and content.

Example:

Brief of Evidence

[Adam Scott] states:

1. That is my full name.
2. I am authorised by the Kiwi Park Primary School Board of Trustees to lay information and to conduct a non-attendance prosecution on the Board's behalf, pursuant to sections 31(7) and 31(8) of the Education Act 1989. **(Produce board's certificate as exhibit.)**
3. In my capacity as an Officer for the District Truancy Service, I became aware on [4 February 2009] that Sam Brown had failed to attend Kiwi Park Primary School.
4. As requested by the school, I visited Sam's home on this date to attempt to identify the reason for his absence.
5. From this date, I carried out four further home visits in response to Sam's persistent absence on [15 February, 18 February, 7 March and 4 April]. On [18 February] I was also accompanied by the principal of Kiwi Park Primary School, Ms Sally Potts. On each of these occasions, I advised the parents of the need for Sam to attend school regularly. Ms Brown's explanation of Sam's absence was that he was too tired to attend school; however there was no medical reason for this.
6. I am aware that three letters have been sent to Sam's parents by Kiwi Park Primary School on 7 February, 11 March and 18 April to encourage Sam's parents to contact the school to discuss Sam's persistent absence. A formal meeting was held between Ms Sally Potts, the school counsellor and Mr and Ms Brown on 14 March, at which time it was agreed that the school counsellor would visit Sam at home to look into the cause of his absence. I am aware that the school counsellor found that there was no obvious reason for Sam's absence.
7. During the period spanning 4 February 2009 to 21 April 2009, Sam was absent from school on 16 separate occasions when the school was open for instruction. The principal of Kiwi Park Primary School has certified that Sam's absence on these occasions was not justified. **(Produce principal's certificate as exhibit.)**

Post-prosecution – primary and intermediate schools

School name					
Period covered					
Student name					
	WEEK ONE				
	Monday	Tuesday	Wednesday	Thursday	Friday
Half day					
Half day					
	WEEK TWO				
	Monday	Tuesday	Wednesday	Thursday	Friday
Half day					
Half day					
	WEEK THREE				
	Monday	Tuesday	Wednesday	Thursday	Friday
Half day					
Half day					
	WEEK FOUR				
	Monday	Tuesday	Wednesday	Thursday	Friday
Half day					
Half day					

This template is to assist with monitoring the attendance of any student whose parents have been prosecuted for non-attendance and the student has returned to school. Close monitoring is advisable for at least three months to ensure the student stays on track with improved attendance and may help to identify any further support that may be needed.

Complete this template by entering one of the following three codes for each half day:

- “P” for present
- “J” for justified absence
- “U” for unjustified absence.

The table below will help in determining whether absences recorded should be classified as “P”, “J” or “U”.

The reasons given for attendance or absence do not represent an exhaustive list.

The classifications of “P”, “J” or “U” are intended as a guide only.

IN CLASS?	REASON	ATTENDANCE/ABSENCE CODE
Yes		P (present)
No	Exam leave	J (justified absence)
No	Truant	U (unjustified absence)
No	Unexplained	Identify as “U” if the absence remains unexplained until the end of the month
No	Explained absence deemed unacceptable	U
No	Off-site course	P
No	Absent for up to five days with permission of principal	J
No	Suspended	J
No	Dentist or doctor	J
No	Work experience	P
No	Camp	P

Post-prosecution – secondary schools (see instructions overleaf)

School name					
Period covered					
Student name					
	WEEK ONE				
	Monday	Tuesday	Wednesday	Thursday	Friday
Period 1					
Period 2					
Period 3					
Period 4					
Period 5					
	WEEK TWO				
	Monday	Tuesday	Wednesday	Thursday	Friday
Period 1					
Period 2					
Period 3					
Period 4					
Period 5					
	WEEK THREE				
	Monday	Tuesday	Wednesday	Thursday	Friday
Period 1					
Period 2					
Period 3					
Period 4					
Period 5					
	WEEK FOUR				
	Monday	Tuesday	Wednesday	Thursday	Friday
Period 1					
Period 2					
Period 3					
Period 4					
Period 5					

This template is to assist with monitoring the attendance of any student whose parents have been prosecuted for non-attendance and the student has returned to school. Close monitoring is advisable for at least three months to ensure the student stays on track with improved attendance and may help to identify any further support that may be needed.

Complete this template by entering one of the following three codes for each half day:

- “P” for present
- “J” for justified absence
- “U” for unjustified absence.

This table will help you to determine whether the reasons your school has recorded for the absence should be classified as “P”, “J” or “U”.

The following reasons for attendance or absence do not represent an exhaustive list. The classifications of “P”, “J” or “U” are intended as a guide only.

IN CLASS?	REASON	ATTENDANCE/ABSENCE CODE
Yes		P (present)
No	Exam leave	J (justified absence)
No	Truant	U (unjustified absence)
No	Unexplained	Identify as “U” if the absence remains unexplained until the end of the month
No	Explained absence deemed unacceptable	U
No	Off-site course	P
No	Absent for up to five days with permission of principal	J
No	Suspended	J
No	Dentist or doctor	J
No	Work experience	P
No	Camp	P



Appendix 2: Application for reimbursement of truancy prosecution cost

(Under Section 29 of Education Act 1989)

Note: This form is for the use of schools seeking reimbursement of costs incurred in prosecution cases involving parents of students in mainstream education and Alternative Education. (For students in Alternative Education, the school in which the students are enrolled must complete the form.)

When you have completed this form, send it to the local Ministry of Education office.

Section A: School information

School:		School no:	
School roll:		Decile:	
Address/Location:			
Nearest District Court:			
Principal:			
Board chair:			
School contact person:			
Tel:			
Email:			
(This should be the person responsible for oversight of the case and co-ordination of the prosecution process.)			

Section B: Information about the truanting student

Full name:			
Date of birth:	/	/	Gender: Male / Female
Residential address:			
Living with:			
Relationship with student:			
Year level:			
Enrolled at the school since:			
Brief summary of truancy history:			

Section C: Information about parents/legal guardians

(Note: Only parents or legal guardians may be liable for prosecution under the Education Act 1989. 'Caregivers' are not necessarily the legal guardians. Both parents may be prosecuted if the truanting student comes from a two-parent household, or both parents live in the area, on the understanding that each parent is equally responsible for the child's non-attendance.)

Father's name:			
Residential address:			
Telephone: (Work)		(Home)	
Mother's name:			
Residential address:			
Telephone: (Work)		(Home)	

Section D: Written evidence to support decision to prosecute

Please submit the following with your application:

- ☐ Record of dates of unjustified absence (e.g. full list of all dates of truancy)
- ☐ Evidence of support and assistance provided to student (e.g. all pastoral care-type programmes, meetings with parent(s) etc)
- ☐ Copies of letters sent
- ☐ Record of board decision to prosecute (please supply a copy of the actual board minute)

Section E: Reasons for your decision to pursue prosecution

Please tick as applicable:

- ☐ Unjustified absence
- ☐ Ongoing and persistent absence
- ☐ Parent-condoned (tacit or actual)
- ☐ Interventions have not worked
- ☐ Student is aged from 6 to 15 years 4 months inclusive

Section F: What support are you requesting?

- ☐ Reimbursement for the services of an informant (any person appointed by the board, e.g. attendance or truancy officer, or any other person) to prepare court documents, lay the information and represent the board in court
- ☐ Reimbursement for the services of a solicitor to take the prosecution
- ☐ Other (please specify)

Section G: Post-prosecution action plan to support the student's return to school

- ☐ Attach post-prosecution action plan to support and monitor student's return to full attendance.

Signed

Principal

Board chair

Recommendation

(For Ministry of Education regional office use only)

Comments:

Signed:

Date:

Manager Education, Curriculum and Performance

Approval

(for Ministry of Education national office use only)

Approved/Declined:

Date:

Senior Manager, Education Curriculum and Performance

Copy of approval sent to the local office

Date:

Request for invoice

Date:

Payment made

Date: