



Education Council Impairment Policy

The Impairment Process provides specialist advice regarding possible medical or behavioural issues that may have impacted an individual's teaching practice and resulted in a conduct or competence process.

The focus is rehabilitative and designed to ensure that the teacher has the best support possible for reintegrating back into the teaching profession (where appropriate).

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Purpose

1. The purpose of this policy is to outline the process the Education Council of Aotearoa New Zealand (Education Council) undertakes if a teacher is referred to an impairment process during a conduct or competence investigation.

Background

2. This policy replaces the New Zealand Teachers Council (Impairment Process) Rules 2009. Following a review of the Education Council Rules, it was decided to revoke the Impairment Rules as they are not a legislative requirement and are considered more suitable to policy.

Commencement

3. This policy is due to commence in June/July 2016 to coincide with the Education Council Rules 2016.

Interpretation

4. In this policy, unless the context otherwise requires, -

Act means the Education Act 1989.

Complaints Assessment Committee means the Complaints Assessment Committee established under the Act and Part 5 of the Rules.

Competence Authority means the Competence Authority established under Part 7 of the Rules.

Competence Assessor means a competence assessor appointed by the Education Council to act as a competence assessor under Part 7 of the Rules. A Competence Assessor works with teachers who have had a report or complaint about competence made about them and reports their findings to the Competence Authority.

Disciplinary Tribunal means the New Zealand Teachers Disciplinary Tribunal established under the Act and Part 6 of the Rules.

Education Council means the governing board of the Education Council of Aotearoa New Zealand established under the Act.

Health practitioner means a person who is, or is deemed to be, registered with an authority as a practitioner of a particular health profession (Health Practitioners Competence Assurance Act 2003).

Impairment means an aspect of a teacher's mental, physical health or disposition that may affect their ability to carry out their functions as a teacher competently and safely. Examples include, but are not limited to, addiction issues, mental health conditions, or personality traits.

Impairment Advisor (Advisor) means a staff member appointed by the Education Council to manage the impairment process and the work of the impairment committee.

Impairment Committee means the advisory body set up to assess whether a teacher is impaired and to provide recommendations to the referring body. Recommendations may include assistance with the impairment.

Investigator means an investigator appointed by the Education Council under the Rules.

Referring body means the body or staff member of the Education Council that refers a teacher to the impairment process.

Rules means the Education Council Rules 2016. The Rules set out how the Education Council and its disciplinary bodies deal with concerns about the conduct and competence of teachers, and also the Education Council's procedures for police vets.

Impairment referral

5. If during a conduct or competence investigation it is suspected that the matter being investigated may be due to impairment, the teacher may be referred to the impairment process.
6. Referrals should only be made where the referring body requires specialist information and advice about the possible impairment.
7. The referring body should consider the impairment referral guidelines before referring a teacher to the impairment process (see Appendix 1). If the teacher is eligible for referral, the referral must outline the reason for the referral and include any relevant documentation.
8. The referring body will inform the teacher that they are being referred to the impairment process.

Impairment process

9. The impairment process provides specialist and rehabilitative input to the conduct and competence process to ensure that a teacher is able to carry out their functions competently and safely. The impairment process may involve:
 - i. an assessment as to whether the teacher has an impairment, and
 - ii. a recommendation to the referral body.
10. The purpose of the impairment process is not to make a decision on whether the conduct or competence issue occurred. That is a matter to be determined by the referring body.
11. Once a referral has been made to the impairment process, the teacher will be assigned to an Impairment Advisor. The Advisor will:
 - i. collate any relevant information received from the referring body;
 - ii. if the Adviser considers there is insufficient evidence for referral, they will liaise with the referring body to seek further information or refer the teacher back;
 - iii. check with the Impairment Committee chair (Chair) whether a recommendation can be made on the basis of the existing information (**Option A**); or
 - iv. set up an impairment committee for further review (**Option B**).

Option A – Recommendation can be made on basis of existing information

12. The Advisor will review the existing information upon referral and liaise with the Chair to determine whether a recommendation can be made to the referral body based on the information at hand. The options include:
 - i. drafting recommendations based on the existing information; or
 - ii. seeking further information (e.g. an assessment from a specialist); or
 - iii. referring the teacher to a full impairment committee.
13. If the outcomes of points (i) or (ii) result in sufficient evidence to draft recommendations without convening the impairment committee, a report will be prepared for the referring body and the teacher.

Option B – Consideration by the Impairment Committee

14. If it is clear that a recommendation cannot be made on the basis of existing information (or following 12(ii)), the Advisor will:
 - i. set up an impairment committee and advise the teacher of the members;
 - ii. provide the teacher with an opportunity (5 working days) to object to the impairment committee members if there is a conflict of interest; and
 - iii. gather further information as required from the teacher, health providers, employer or any other relevant parties.
15. The impairment committee will consider whether recommendations can be made to the referring body or if the committee requires further information.
16. Once all information has been received and considered by the committee, a report to the referring body will be prepared. The teacher must have an opportunity to comment on the report before it goes to the referral body (if it is considered appropriate).

Impairment Committee Meetings

Membership

17. The Committee is comprised of at least three people, including at least one health professional and at least one teacher with a current practising certificate.
18. The Chair must be a practising health practitioner.
19. Members of the Impairment Committee are appointed for a term of up to 3 years.

Meetings

20. The Committee can consider referrals in person or by way of telephone, e-mail or video link. All members of the committee must be present when a matter is to be considered.
21. A conflict of interest check will be undertaken prior to the committee meeting. If a conflict is identified, then the committee member in question will be replaced.

Assessment

22. In the course of considering a possible impairment, various information may be obtained, including:
 - written advice from a health provider on the available information;

- an assessment of the teacher by a health provider with the agreement of the teacher;
 - an outline of what the teacher has already done, or is proposing to do, to deal with any impairment and its effects on an ongoing basis;
 - a request for relevant information from other parties (such as the referring body or the teacher's employer);
 - an invitation to the teacher to meet with the Committee or any other specialist.
23. If the teacher is requested to attend an assessment by a health provider, they will be advised of the possible consequences of not attending an assessment. The consequences include:
- the committee only being able to rely on the other information available to it;
 - the committee may be unable to ascertain whether the teacher has (or had) an impairment;
 - the committee may not be able to reach an agreement or make any recommendations to the referring body.
24. The teacher will receive a copy of any written comments or advice received from a health practitioner and can be present for any oral representations made to the Committee.

Costs

25. The Education Council may cover the cost of an assessment by a health provider as identified by the Council.

Reports

26. The impairment process seeks to ascertain whether the teacher has an impairment and if so, it will identify:
- what the impairment is;
 - what the adverse impacts of the impairment (including any risk of relapse) may be;
 - what precautions, and assistance are recommended to allow the teacher to practise competently and safely.

Interim risk report

27. The Advisor can provide an interim risk report to the referring body (in consultation with the Chair) if there are reasonable grounds to believe the teacher's impairment poses a serious or immediate risk to themselves, their students, or any other person. The referring body take any immediate action deemed necessary.
28. The interim risk report must cover:
- the nature of the risk to safety; and
 - any recommended actions that are considered necessary for the safety of the teacher, students or any other person.

Impairment Report

29. A draft of the impairment report and any medical information received may be provided to the teacher for comment and agreement.

30. The impairment report must include:

- a description of the method used to ascertain whether the teacher had (or has) an impairment (including any advice obtained, or assessment given by, a health provider);
- a statement as to whether the teacher had (or has) an impairment;
- recommendations for the referral body; and
- any response or agreement received from the teacher.

31. The Chair will sign the report (incorporating any amendments) and it will be forwarded to the referring body, the teacher and to the teacher's employer as appropriate.

Appendix 1 - Education Council Impairment Referral Guidelines

Before a teacher is referred to the impairment process, the referring body should ensure the teacher meets the criteria for referral. Below are some questions for consideration:

Criteria	✓
Will the conduct/competence investigation benefit from knowing: <ul style="list-style-type: none"> • whether there is (or was) an impairment and what the impairment is • whether the reported conduct/competence issue may have been a result of an impairment • the risks the impairment may pose to teaching practice • how the impairment can be managed 	
Is there sufficient evidence to point towards a possible impairment?	
Is the teacher a good candidate for referral? For example, are they likely to engage fully for the process to be meaningful?	
Is this the best time to refer them? For example, is it better for the teacher to be referred upon re-application or return to the country?	
What is the time and impact of the referral on the teacher's continued ability to teach?	
Is the teacher better placed to supply health documentation to the referring body?	
Is the referral appropriate given the severity of the conduct issue? For example in cases of serious misconduct where referral is unlikely to alter the outcome.	

Appendix 2 – Impairment Process Flowchart

