**Can your child be jabbed at school without your consent?**

**The answer to this depends on the age of your child.**

**If your child is under the age of 12, express parental consent is required for your child to receive a vaccine at school. See more pages 2 - 8 below.**

**If your child is 12 or over and could be considered competent to understand the risks, then there is an argument that your child could give their own consent. The assessment of whether your child is competent to understand the risks, is called *Gillick* competency based on a UK court decision. See more pages 2 – 10 below.**

**Can your 5-11-year-old kid be jabbed at school without parental consent?**

In short, **NO**: children cannot be vaccinated at school without parent or guardian **consent**.

Both the NZ government confirm this:

*'Consent for vaccination needs to be given by a legal guardian of the child.*

*If the adult who accompanies the child to the appointment that is not the child’s legal guardian:*

* *the vaccinator will need to verbally confirm by phone with a legal guardian that they consent to the child being vaccinated, or*
* *the responsible adult can bring a signed copy of the COVID-19 vaccination consent form completed by a guardian."*

*This is standard consenting process.* <https://covid19.govt.nz/covid-19-vaccines/get-the-facts-about-covid-19-vaccination/covid-19-vaccination-and-children/>

And so does the WHO:

*"A child or adolescent in the age group 6 to 17 years cannot provide consent to vaccination and so consent is normally required from their parent or legal guardian."* <https://www.who.int/immunization/programmes_systems/policies_strategies/consent_note_en.pdf> (PDF page 2)

As a parent or guardian it is therefore vital to make sure the school knows what your position is by setting that out in writing to the school, principal, and board of trustees so that there can be no doubt.

We have some template letters in our Kids Kit that may assist: <https://voicesforfreedom.co.nz/resources>

**Can my child who is 12 + consent to be vaccinated without my approval?**

The government website states:

*“While young people aged 12 and above have the right to give their own consent, we recommend they discuss vaccination with their parents, whānau or a trusted support person.”*

[*https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-vaccines/covid-19-vaccine-ages-12-18*](https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-vaccines/covid-19-vaccine-ages-12-18)

Note this is inconsistent with the WHO:

*"A child or adolescent in the age group 6 to 17 years cannot provide consent to vaccination and so consent is normally required from their parent or legal guardian."* <https://www.who.int/immunization/programmes_systems/policies_strategies/consent_note_en.pdf> (PDF page 2)

With 12+ there is no clear answer. However, if a child who is 12 and over is considered to be sufficiently competent to understand the information and make decisions, then there is a chance they could get vaccinated without your consent.

Your starting place is always to discuss this with your child. However, if you do have concerns that they might bend to the pressure, then you could write to the school, your child’s doctor, any vaccination centres in your region including pharmacies to let them know that in respect of their child, they are not competent to make decisions and as their parent you do not consent to them being vaccinated.

**The following is relevant to all children up to the age of 18 and covers:**

1. **What is consent – informed consent and parental consent?**
2. **Who can give parental consent?**
3. **What happens if parents or guardians can't agree?**
4. **Who is responsible for my child/ren while they are at school?**
5. **Duty of Care when a child is at school grounds**
6. **What happens if a bus comes to the school to collect my child and take them to a vaccination centre?**
7. **What are the school’s obligations to students and parents?**
8. **What is Consent?**

When it comes to medical procedures and children, two types of consent are relevant:

1. Informed consent
2. Parental consent

For consent to be valid, it must be informed, understood and voluntary, and the person consenting must have the capacity to make the decision.

“**Informed consent** is a process rather than a one-off event. The essential elements of this process are effective communication, full information, and freely-given competent consent.” (Fraser, 1998, p.1).

Informed consent is an integral aspect when medical service are provided. It is also an ethical and legal requirement under the codes of ethics of various professional bodies, the Health and Disability Act 1994, and Code of Health and Disability Services Consumers’ Rights 1996:

*"Informed consent legally applies to the provision of health and disability services. As well as ensuring that there is a process for obtaining initial informed consent it is also important to ensure that informed consent is an ongoing process throughout service delivery."*

The Code of Health and Disability Services Consumers’ Rights requires that informed consent is given by “the consumer” – the person receiving the medical service.

There is no particular age at which children or young people may give informed consent under the Code. The focus is instead on the competence of the child or young person to comprehend what they are agreeing to.

The Care of Children Act 2004 provides that a child over the age of 16 can give or refuse consent to medical treatment.

However, this does not mean all children under the age of 16 cannot consent to medical treatment. Key to this is how competent a child is to make such a decision.

There is no defined age at which any person may be regarded as competent, but the Code of Health and Disability Services Consumers’ Rights (which originates from the Health and Disability Commissioner Act) provides some guidance.

This states that everyone – adult or child – is presumed to be competent to make such decisions unless there are reasonable grounds for thinking otherwise.

**Competence and capacity**

Regardless of age, an individual must be able to understand

* that they have a choice (freedom from coercion)
* why they are being offered the ‘treatment’
* what is involved in what they are being offered
* what the probable benefits, risks, side effects, failure rates and alternatives are.

The United Nations Convention sees it as the state’s responsibility (in partnership with parents where they are available and responsible) to ensure that children are:

* adequately provided for in matters of health, education, play, welfare, culture and
* leisure
* protected from discrimination, abuse, exploitation, injustice and armed conflict
* given a name and identity, are consulted and have their views taken into account, have
* access to information and freedom of speech and have a right to physical integrity.

<https://www.moh.govt.nz/notebook/nbbooks.nsf/0/F4F8A3899527E75B4C25670B0005C7B0/$file/consent-in-child-and-youth-health.pdf>

***Parental consent*** is that which is given by a parent or caregiver on behalf of a minor or otherwise incompetent child.

A parent or caregiver has to give consent on the child's behalf because minors are generally considered to lack the decision making power or capacity to make a medical decision and therefore require parental consent for most health care decisions, including vaccination.

These guidelines focus on parents or legal guardians providing informed consent for children as in many situations practitioners will be working with children and young people who may not be ‘competent’ to give informed consent.

**2. Who can give parental consent?**

As already set out above, but repeated here for completeness, the NZ government confirms:

*"Consent for vaccination needs to be given by a legal guardian of the child.*

*If the adult who accompanies the child to the appointment that is not the child’s legal guardian:*

* *the vaccinator will need to verbally confirm by phone with a legal guardian that they consent to the child being vaccinated, or*
* *the responsible adult can bring a signed copy of the COVID-19 vaccination consent form completed by a guardian.*

*This is standard consenting process."* <https://covid19.govt.nz/covid-19-vaccines/get-the-facts-about-covid-19-vaccination/covid-19-vaccination-and-children/>

**3. What happens if two parents can't agree?**

There are circumstances when two parents can't agree– and they don't need to be separated to not agree.

Like with informing the school it is also vital to confirm in writing with your spouse or ex-spouse what your position is with respect to a medical procedure or important decision for your child/ren.

We have some template letters in our Kids Kit that may assist: <https://voicesforfreedom.co.nz/resources>

Parent or guardianship disputes involve differences in opinion about the mode of the child’s care, development and upbringing, education and medical treatment, any parent or guardian may:

1. request counselling in respect of their dispute under section 65(2) Care of Children Act 2004; or
2. apply to the family court for its direction on the matter; or
3. guardianship matters on which guardians are “unable to agree” or “unlikely to be able to agree” s 46R Care of Children Act 2004.

<https://www.legislation.govt.nz/act/public/2004/0090/latest/DLM317233.html>

The general rule is that the guardians of a minor are entrusted with the ability to make decisions on behalf of the minor because the minor lacks legal capacity to make such decisions for example consenting to vaccinations.

A minor whose guardians will not consent to a particular course of action which the minor wishes to undertake is entitled to apply to the Family Court for the Court’s approval, which if given is treated as if it were the guardian’s consent.

**4. Who is responsible for my child/ren while they are at school?**

Every day when parents send their child/ren off to school, they trust teachers and other school officials to care for their children’s safety and well-being as well as their learning. Teachers have a wide range of responsibilities to students that come from a variety of local laws and regulations.

In addition to the legal requirements, teachers are obligated to observe ethical standards in codes of professional responsibility adopted by local school districts and District education departments.

Teachers have a legal duty to supervise students in the same way that a sensible, careful parent would do in similar circumstances.

Failure to keep students safe while onschool property can attract a law suit by a parent for harm to the child as a result of negligence.

As part of section 387(6) of the Education Act, it is binding on all teachers not to breach the code.

The Code of Professional Responsibility and Standards for the Teaching Profession in New Zealand sets out the high standards for ethical behaviour that are expected of every teacher; the Standards describe the expectations of effective teaching practice. Which values include showing integrity by acting in ways that are fair, honest, ethical and just and engaging in positive and collaborative relationships with learners, their families and whanau, colleagues and the wider community.

Teachers understand that families and whānau and the wider community trust them to guide their children and young people on their learning journey and to keep them safe. By acting with integrity and professionalism in all that they do, and to maintain this trust and confidence.

Teachers have a commitment to engaging in ethical and professional relationships with learners that respect professional boundaries which include not engaging in a coercive behaviour. They have a commitment to being fair and effectively managing my assumptions and personal beliefs which include my choice not to have my child vaccinated while on school grounds.

Teachers have a commitment to respect their trusted roles in society and influence they have in shaping futures by promoting and protecting the principles of human rights, sustainability and social justice.

<https://teachingcouncil.nz/assets/Files/Code-and-Standards/Our-Code-Our-Standards-Nga-Tikanga-Matatika-Nga-Paerewa.pdf>

Teachers have a professional obligation to develop professional relationships with a diverse range of learners and whānau and maintain and raise professional standards.

<https://teachingcouncil.nz/professional-practice/conduct-concerns/>

**5. Duty of Care when a child is at school grounds**

Staff or volunteers working for Child Protection, licensed children’s services and NZ schools have a duty of care to support and protect the children and young people with whom they are professionally involved. When staff members form a reasonable belief that a child or young person has been harmed or is at risk of harm, they are ethically bound to take action to protect the safety and wellbeing of that child or young person. For some staff members this obligation is legally mandated.

Duty of care is breached if a person:

* does something that a reasonable person in that person’s position would not do in a particular situation,
* fails to do something that a reasonable person in that person’s position would do in the circumstances,
* acts or fails to act in a way that causes harm to someone to whom the person owes a duty of care.

**6. What happens if a bus comes to the school to collect my child and take them to a vaccination centre?**

When your child is “at school” they are in the care of the school and the school is responsible for them. Your child is not allowed to let your child leave their care and school grounds without your consent.

That consent should be requested and given in writing.Failure to do so could give rise to a complaint to the MOE, or possible legal or disciplinary proceedings.

**7. What are the school’s obligations to students and parents?**

Schools and teachers have professional, ethical and legal obligations to children while the children are on school grounds - it is unethical and illegal for the school to coerce a child to receive a vaccine without parental consent.

Following are the obligations a school has.

Boards of trustees of state and integrated schools, and the governing bodies of private schools, are responsible for the care of students and for providing a safe learning environment. They have key obligations in the following areas:

1. **Education policy and guidelines** – School boards are required by government education guidelines to provide a safe physical and emotional environment for students. Schools should have policies to achieve a safe environment, including an anti-bullying policy, and should regularly review these policies. The guidelines also require the school to promote healthy food and nutrition for all students.

Education Act 1989, ss 60A, 61, 63

National Administration Guidelines, NAG 2(b), 5 (go to: [www.minedu.govt.nz](http://www.minedu.govt.nz/))

1. **Health and safety laws** – Schools have to take all practicable steps to make sure no physical or mental harm happens to students during school hours, on school grounds, or at school-related activities. These health and safety requirements apply not just to school boards of trustees but also to governing committees of school boarding hostels.

Health and Safety at Work Act 2015, ss 37 and 45

1. **Duty of care under civil law** – Schools also owe a duty of care to their students under the civil law of negligence, and a student who suffers harm may be able to bring a claim in the courts for a breach of this duty of care. However, if the claim relates to a physical or psychological injury, the claim may be barred as they are likely to be covered by ACC (meaning you cannot bring civil claims in the courts for them). A lawyer will be able to help you understand what options may be available in your case.

<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM99494.html>

1. **Teachers’ ethical duties** – A Code of Ethics established by the New Zealand Teachers Council places an ethical obligation on registered teachers to “promote the physical, emotional, social, intellectual and spiritual wellbeing of learners”.

Code of Ethics for Registered Teachers, clause 1(f) [www.teacherscouncil.govt.nz/ethics](http://www.teacherscouncil.govt.nz/ethics)

<https://studentrights.nz/problems-at-school/Student-welfare-and-safety-The-schools-obligations.html>

**Further resources**

There are some further resources that may assist:

Education: <https://parents.education.govt.nz/assets/Documents/Special-Education/Informed-Consent-Guidelines.pdf> See also should an initial informed consent checklist which includes the right to decline services offered to a child and the right to withdraw consent to the services at any time. <https://parents.education.govt.nz/assets/Documents/Special-Education/Initial-Informed-Consent-Checklist.pdf>

New Zealand Early Intervention Teachers Code of Ethics (2003) <http://www.earlyinterventionassociation.org.nz/>