

## PERSONNEL ADMINISTRATIVE MEASURES (PAM)

Mpumalanga	R 43.05	4023
Northern Cape	R 11.05	1033
North West	R 32.55	3042
Western Cape	R 41.05	3836
TOTAL	R 500 m	46 726

- E.1.2.6.1 The allocation will be adjusted every year based on the annual adjustment rate.
- E.1.2.6.2 The number of projected incentivised posts may vary, by not more than 10% as a result of paragraph E.1.2.6.
- E.1.2.6.3 The Minister could, based on an analysis of reports received by the DG on the implementation and the fact that all allocations have been transferred to provincial departments of education, declare on an annual basis a number of posts as incentive posts in line with the policy.

**E.2 MEASURES PRESCRIBED BY LEGISLATION NOT ADMINISTERED BY THE MINISTER OF BASIC EDUCATION AND SERVICE BENEFITS WHICH APPLY TO ALL EMPLOYEES OF THE STATE**

- E.2.1 Application of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993)
- E.2.2 Government Employees Pension Fund Law, 1996 (Proclamation 21 of 1996)
- E.2.3 The measures in respect of, inter alia, the following matters apply to educators, mutatis mutandis, as they apply to other employees of the state:
- E.2.3.1 **Local subsistence and camping allowance** (*PSCBC Resolution 3 of 1999*)
- E.2.3.2 **Housing allowance scheme** (*PSCBC Resolution 2 of 2004, Government Gazette No 27657, dated 6 June 2005 and the Determination on Housing, issued by the Minister of Public Service and Administration and PSCBC Resolution No. 7 of 2015*)
- Refer to Annexure E.1 for the current housing allowance amount.
- E.2.3.3 **Medical assistance for educators and former educators** (*PSCBC Resolution 1 of 2006 and the Determination on Medical Assistance in the Public Service, issued by the Minister of Public Service and Administration and PSCBC Resolution No. 2 of 2015*)
- Refer to Annexure E.1 for the current medical aid subsidies.
- E.2.3.4 **Recognition of long service** (*PSCBC Resolution 1 of 2012 and Determination on the long service recognition in the public service, issued by the Minister of Public Service and Administration*)
- Refer to Annexure E1 for the current cash amount payable to qualifying educators.
- E.2.3.5 **Service bonus** (*PSCBC Resolution 3 of 1999, PSCBC Resolution 7 of 2000 and the DPISA Financial Manual (for purposes of the calculations and application of allowances and benefits, August 2010 and PSCBC Resolution No. 2 of 2015)*)

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E.2.3.6 **Resettlement** (*Regulation 90 of the Regulations regarding the terms and conditions of employment of educators, PSCBC Resolution 3 of 1999 and the DPSA Financial Manual (for purposes of the calculations and application of allowances and benefits, August 2010)*)

E.2.3.6.1 Upon the transfer, appointment or termination of service of an educator in terms of the EEA or his/her death, the educator or his/her estate will be compensated by the employer for the reasonable resettlement expenditure actually and necessarily incurred as a result thereof within the framework of PSCBC Resolution 3 of 1999. (*Regulation 90 (1) of the regulations regarding the terms and conditions of employment of educators*)

E.2.3.6.2 The HoD within the context of existing provisions, determines policy regarding compensation for resettlement expenditure.

Refer to Annexure E.1 for the cash amount payable for new books, uniforms and related costs.

Note: Official traveling and transport are dealt with in terms of provincial policy.

### **E.3 RETRENCHMENT PACKAGE**

E.3.1 The following retirement benefits will apply to an educator who, because of rationalisation, has been retrenched by the department in which he/she is appointed, before reaching retirement age:

E.3.1.1 Payment of pension benefits in terms of the Rules of the Government Employees Pension Fund.

E.3.1.2 Payment of leave credit due to the educator, calculated in terms of paragraph H.4.4 en H.4.5 of Chapter H.

E.3.1.3 Payment of a service bonus on a pro rata basis. Refer to paragraph E.2.3.5.

E.3.1.4 Continued payment of the monthly housing allowance for a maximum period of six months after termination of service. Those educators who received this benefit and who are re-employed by any government department within the six months period, will not qualify for a housing allowance for the remaining period of the six months.

E.3.1.5 Continued occupation of official quarters, where possible, for a period of three months after termination of service.

E.3.1.6 Medical assistance in terms of paragraph E.2.3.3.

E.3.1.7 The cancellation of any service commitments that the educator may have on termination of service.

E.3.1.8 In cases where the educator enjoys the benefit of a motor vehicle scheme, the rules of the scheme must be applied.

E.3.1.9 Application of the rules in respect of resettlement costs. Refer to paragraph E.2.3.6.

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E.3.1.10 The employer shall, if he/she intends to discharge an educator in terms of section 11(1)(b) of the EEA, give the educator three calendar months' written notice (*Regulation 16 of the Regulation regarding the terms and conditions of employment of educators*).

**E.4 EMPLOYEE-INITIATED SEVERANCE PACKAGE (EISP)** (*Government Gazette No. 29056, dated 21 July 2006 and the Determination on the introduction of an employee-initiated severance package for the public service (revised), January 2006*)

The EISP came into effect on 1 January 2006. Refer to above-mentioned Determination.

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## ANNEXURE E.1

## ALLOWANCES AND SUBSIDIES (AMOUNTS)

<b>Medical assistance (monthly subsidy)</b>		
<b>GEMS</b>		
<b>Category</b>	<b>1 March 2011</b>	<b>1 January 2015</b>
Single member	R720.00	R 925.00
Member with one dependent	R1 440.00	R1 850.00
Member with 2 dependents	R1 880.00	R2 415.00
Member with 3 dependents	R2 320.00	R2 980.00
Member with 4+ dependents	R2 760.00	R3 545.00
<b>Open medical scheme</b>	R1 014.00	R1 014.00

<b>Housing allowance</b>	
With effect 1 July 2012	R900.00 per month
Employees in service on or before 27 May 2015	R1 200.00 housing allowance per month for eligible employees with effect from 1 July 2015 or R900.00 housing allowance per month for employees who do not own a house, plus R300.00 which is paid into an individual-linked savings facility.
Employees entering the system after 27 May 2015	R1 200.00 per month for employees who own a house and/or are repaying a home loan for houses in which they live, R1 200.00 per month diverted into the individual-linked savings account if the individual does not own a house.

<b>Recognition of long service (continued service)</b>		<b>31 July 2012</b>	<b>1 April 2013</b>	<b>1 April 2014</b>	<b>1 April 2015</b>
	20 years' service	R7 500.00	R7 920.00	R8 371.00	R8 882.00
	30 years' service	R15 000.00	R15 840.00	R16 743.00	R17 764.00
	40 years' service	R20 000.00	R21 120.00	R22 324.00	R23 686.00

<b>Resettlement expenditure: new school books, uniforms and related costs</b>	<b>1 April 2013</b>	<b>1 October 2013</b>	<b>1 January 2014</b>	<b>1 July 2014</b>
	R1 098.00	R1 110.00	R1 128.00	R1 239.00
	<b>1 October 2014</b>	<b>1 January 2015</b>	<b>1 April 2015</b>	<b>1 July 2015</b>
	R1 320.00	R1 437.00	R1 585.00	R1 767.00

Note: These amounts are subject to adjustment from time to time.

## CHAPTER F

### TIME OFF AND SECONDMENT

- F.1 INTRODUCTION**
- F.2 GENERAL**
- F.3 TIME OFF**
- F.4 SECONDMENT TO TRADE UNIONS**
- F.5 SECONDMENT OF SHOP STEWARDS**

#### ANNEXURE

##### **Annexure F.1 SS distribution – current and expired**

#### **F.1 INTRODUCTION**

- F.1.1 The measures contained in this chapter are based on the following principles:
  - F.1.1.1 The acknowledgement of labour rights entrenched in the Constitution of the Republic of South Africa, the LRA, and the Constitution of the ELRC, which seeks to promote labour peace.
  - F.1.1.2 That an educator's role in the education process is dynamic and developmental, and therefore requires the active participation of educators at school, provincial and national level.
  - F.1.1.3 That the amount of time off and the frequency thereof should at all times be reasonable and fair.
  - F.1.1.4 That arrangements for time off should consider:
    - F.1.1.4.1 The need for the process of teaching and learning to be uninterrupted.
    - F.1.1.4.2 The importance of high productivity levels.
    - F.1.1.4.3 Efficiency and effectiveness in services rendered to the general public.
    - F.1.1.4.4 The need for order in the education system.
    - F.1.1.4.5 The constitutional rights of the child.

#### **F.2 GENERAL**

- F.2.1 When requiring time off:
  - F.2.1.1 A reasonable period of notice must be given to the responsible person designated by the employer for time off to attend meetings, training courses, and other agreed to activities.

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- F.2.1.2 In respect of urgent meetings arising from the collective bargaining process, the trade union should advise the responsible person designated by the employer timeously of such urgent meetings.
- F.2.1.3 When requesting time off for workplace and other such like meetings, every effort should be made to hold them before or after official school hours, or during lunch breaks.
- F.2.1.4 An efficient record system must be kept in respect of time off allowed for all entitled educators.
- F.2.1.5 Management must be informed timeously of any resignation of members/representatives.
- F.2.2 Applications for time off must be considered on its merits and the principle of reasonableness and fairness must apply.
- F.2.3 It is the responsibility of managers identified by the provincial departments of education to keep separate registers of trade union members and representatives in good standing, as well as details of time off allowed with full pay and without pay, and to forward such records annually, but before 31 December, to both the trade unions concerned and the responsible personnel offices.

**F.3 TIME OFF****F.3.1 Time off for collective bargaining purposes****F.3.1.1 Entitlement**

Duly elected, identified trade union representatives are allowed time off, including during school hours, to attend meetings at national and provincial levels for collective bargaining purposes. Furthermore, such trade union representatives are entitled to take reasonable time off for preparatory meetings during the collective bargaining process.

**F.3.1.2 Provisions**

- F.3.1.2.1 Identified representatives must give their supervisors reasonable notice of meetings to be attended and proof that they have been nominated to attend such meetings.
- F.3.1.2.2 Confirmation of meetings must be submitted by the representative to his/her supervisor for record and auditing purposes.
- F.3.1.2.3 Subsequent to representatives attending meetings, confirmation must be given by the trade union to the representative's supervisor that he/she had attended such meetings.
- F.3.1.2.4 In addition, representatives are allowed a maximum of 1 additional school day per event, which should be regarded as special leave with full pay, for preparatory meetings during the collective bargaining process; provided that the employee organisation confirms that such preparation is essential to the collective bargaining process and that the duration of such preparation necessitates the maximum or a lesser amount of hours required.

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**F.3.1.3 Payment for time off**

In terms of this entitlement, the duly elected, identified trade union representative is allowed time off with full pay.

Note: The functions referred to in paragraph F.3.1.1 to F.3.1.2 will be performed primarily by SS appointed in terms of ELRC Collective Agreement 2 of 2007 but, subject to this provision, trade unions may utilise other identified union representative/s for agreed upon interaction with the employer at the level of the circuit/district, regional or provincial after negotiating with the identified employer representative/s designated by the HoD. (*Clause 8.1.1 and 8.1.2 of ELRC Collective Agreement No. 2 of 2007*).

**F.3.1.4 Time off for trade union duties****F.3.1.4.1 Entitlement**

Duly elected, identified representatives of a trade union may take reasonable time off, including during school hours, to carry out trade union duties which have been agreed to between the parties of the ELRC.

**F.3.1.4.2 Provisions**

- (a) The following trade union duties are provided for:
- (i) Representing members in good standing during –
    - disciplinary hearings
    - grievance and dispute procedures
    - retrenchment/redundancy procedures
    - dismissals.
  - (ii) Attending labour relations training.
  - (ii) Attending, participating in and organising workplace forums.
- (b) The amount of time off to be allowed must not exceed a maximum of three (3) school days at a time and the entitlement is limited to a maximum of twelve (12) school days per annum. Should additional time off be essential and in the interest of labour peace, the employer may, with due regard to the principles of reasonableness and fairness, consider a motivated request for additional time off.

**F.3.1.4.3 Payment for time off**

In terms of this entitlement, and subject to the limitations of the entitlement, representatives are allowed time off with full pay.

**F.3.1.5 Time off for trade union activities****F.3.1.5.1 Entitlement**

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Subject to the academic programme not being interrupted, an employee who is a registered member in good standing with a trade union, may take reasonable time off during working hours to participate in agreed to trade union activities.

**F.3.1.5.2 Provisions**

The following trade union activities are provided for:

- (a) Attending pre-arranged workplace meetings, other than those arising out of industrial action, which have been agreed to between the trade union affected and the employer, and which cannot be held outside working hours.
- (b) Meeting full-time officials, by arrangement and agreement between the trade union and employer, to discuss bona fide trade union matters.
- (c) Voting during trade union elections where voting cannot take place outside working hours.
- (d) Voting in respect of procedural/lawful strike actions.

**F.3.1.5.3 Payment for time off**

Trade union members are allowed a maximum of eight (8) school hours per annum, calculated from 1 January to 31 December of each year, with full pay to engage in the activities indicated above.

Note: Where there is a dispute relating to time off, the provisions of the Constitution of the ELRC will apply. Time off with full pay is permitted for trade union members/representatives to engage in this process.

**F.4 SECONDMENT TO TRADE UNIONS****F.4.1.1 Entitlement**

The employer recognises the need for trade unions to utilize the skills and expertise of their members to manage the affairs of the trade union. Trade unions are therefore entitled to have educators seconded to trade unions registered with the ELRC, to occupy full time positions to which they have been duly elected.

This entitlement applies only to trade unions in good standing, and who comply with the provisions of the LRA and the Constitution of the ELRC.

**F.4.1.2 Basis upon which the number of trade union members in good standing, will be allowed to be seconded for a contracted period of one year**

F.4.1.2.1 Consideration must be given to the teaching and learning programme. It is important that the entitlement does not disrupt the school programme or the management of education.

F.4.1.2.2 For this purpose this entitlement is structured in such a manner that it applies to a calendar year, that is, from 1 January to 31 December of each year.



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F.4.1.2.3 Trade unions will have to elect or appoint their officials on the basis of a calendar year.

F.4.1.2.4 The following formula will apply in respect of the secondment of trade union members in good standing, to full-time positions in a trade union for a period of one (1) year:

Number of audited employee organisation members (i.r.o. a federation, membership can only be counted once)	Number of members to be allowed to be seconded to full-time positions in an employee organization
0 - 3000	0
3001 - 5000	1
5001 - 8000	2
8001 - 12000	3
12001 - 17000	4
17001 upwards	An additional 1 member for every 6000 above 17000 to a maximum of 7 additional members

#### **F.4.1.3 Payment in respect of seconded educators**

F.4.1.3.1 Members of trade unions in good standing, who have been seconded to trade unions in accordance with this entitlement, will retain all their benefits.

F.4.1.3.2 Trade unions must be responsible for refunding the full package payable to members seconded in terms of this entitlement.

F.4.1.3.3 The GS of the ELRC must keep separate and accurate records of payments made in terms of this entitlement.

#### **F.4.1.4 Entitlement in respect of national negotiators**

F.4.1.4.1 This entitlement will apply only to national negotiators of trade unions in the ELRC, who are educators at schools and who are representatives of the ELRC in terms of the provisions of clause 7 of the constitution of the ELRC.

F.4.1.4.2 In addition to the entitlement provided for in paragraph F.4.1.2 and F.4.1.3 above, trade unions are entitled to have national negotiators seconded.

F.4.1.4.3 Such secondment will be for a maximum period of one (1) year at a time, renewable for such longer period as may be agreed to between the employer and relevant trade union.

F.4.1.4.4 The GS of the ELRC must from time to time, furnish provincial heads of departments with the names and particulars of national negotiators.

F.4.1.4.5 An employee returning to duty, upon completion of the period of secondment, must be assigned:

- (a) In the case of a period of secondment of up to two (2) years, to the position/post that he/she would have held if the secondment had not been taken, or at his/her request, to another post/position agreeable to the employer.

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- (b) In the case of a period of secondment of more than two (2) years, to an equivalent position/post to that held prior to the secondment, which is acceptable to the employee, and which shall be reasonable and fair.

F.4.1.4.6 The employer will remain responsible for the seconded employee's full remuneration package which is not subject to the provisions of paragraph F.4.1.3.2 above, while the relevant trade union will be responsible for 50% of the full remuneration package of the temporary substitute.

F.4.1.4.7 The provisions relating to the retention of benefits and method of payment, as provided for in paragraph F.4.1.3 above apply **mutatis mutandis**.

**F.5 SECONDMENT OF SHOP STEWARDS** (*ELRC Collective Agreement No. 2 of 2007*)

F.5.1 Election, nomination and appointment of Shop Stewards (SS) in Education:

F.5.1.1 Eligibility for appointment as a SS.

F.5.1.2 In order to be appointed as a SS a person must:

F.5.1.2.1 Be a post level one and a permanent educator at a school-based institution.

F.5.1.2.2 Have been elected or nominated by the trade union of which that person is a member.

Note: Departmental heads and deputy principals, who were SSs in 2006 and extended or nominated in 2007, may continue as SSs, until replaced.

F.5.1.2.3 Allocation and distribution of SS

- (a) The maximum number of SSs that may be appointed, is 120.
- (b) The distribution of the SSs from the 1st August 2007 will be as reflected in Annexure F.1.
- (c) The determination by the GS of the ELRC of the distribution of the SSs must take into cognisance the size of the province and the vote weights of the admitted trade unions in that province.
- (d) The determination, in Annexure F.1, is based on the vote weights calculated as on 31<sup>st</sup> December 2006; and this takes effect from 1<sup>st</sup> July 2007.
- (e) The determination for the succeeding years will be based on the vote weights calculated as at the 30<sup>th</sup> September of the preceding year, and will be valid for the period 1 January to 31 December of each calendar year (no change in allocations during the course of the year).
- (f) The GS of the ELRC must issue the determination by mid-November at the latest to all parties concerned.

F.5.1.2.4 Notice of the elected or nominated SS

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- (a) In submitting an appointee as proposed SS, the trade union parties to the ELRC must ensure that SS nominated or elected by them are allocated to deal with the trade union's functions and interaction with the employer at national, provincial and or regional/district level.
- (b) Once the trade unions have nominated or elected their SS, the trade unions must notify the national and the respective provincial departments of education and the GS of the ELRC, in writing, of these names and details of the educator, on the prescribed form.
- (c) In its notification the trade union must specify all the details required, for the notification to be valid.

**F.5.1.2.5 Appointment of the SS**

- (a) The persons nominated or elected to the position of SS will be duly appointed once the national and the respective provincial departments of education and the GS of the ELRC have received the notifications referred to in paragraph F.5.1.2.4. Their appointment will be by way of a secondment.
- (b) The provincial departments of education undertake to inform all educators by means of a circular distributed to all the education institutions of the contact details of the appointed SSs for that province.
- (c) The trade unions undertake to inform all their members of the contact details of their appointed SSs for the province concerned.

**F.5.1.2.6 Period of appointment**

- (a) The trade union must determine the period of appointment of the SS, but not less than one year at a time.
- (b) The SS will be seconded from the date of appointment and until the expiry of the period or when replaced, by the relevant trade union, whichever is applicable.

**F.5.2 Benefits**

- F.5.2.1 The relevant provincial department of education must pay the appointed SS his/her full remuneration package.
- F.5.2.2 A SS who returns to his/her educator duties must be assigned the post he/she left prior to his appointment. If this is impossible and/or impractical or not in the best interest of education, the provincial department of education must offer the SS a suitable alternative, commensurate with the post that the SS held prior to his/her appointment as a SS.
- F.5.2.3 Notwithstanding the above, the educator concerned, during the period of appointment as a SS, shall retain all the rights and benefits attached to his/her educator post, including salary increases, promotion opportunities and benefits associated with his/her seniority as if he/she had not been seconded.

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**F.5.3 The rights, duties and obligations of a SS**

- F.5.3.1 The role and functions of a SS include, but are not limited to, the following:
- F.5.3.1.1 To assist and communicate with educators about education, employment and trade union related matters.
  - F.5.3.1.2 To assist and represent his/her trade union's members in disciplinary hearings, in processing grievances and in appeal procedures in terms of the EEA.
  - F.5.3.1.3 To assist and represent his/her trade union's members in dispute resolution procedures declared in terms of the ELRC's dispute resolution procedures.
  - F.5.3.1.4 To represent his/her trade union and participate in collective bargaining processes, including consultations and negotiations with the employer and its representatives.
  - F.5.3.1.5 To assist his/her trade union in monitoring the employer's compliance with the provisions of any workplace-related laws and any collective agreement binding on the employer.
  - F.5.3.1.6 To report any alleged contravention of a workplace-related provision of any law and any collective agreement binding on the employer to the employee, his/her trade union or any responsible authority or agency.
- F.5.3.2 The SS, in performing his/her functions, must endeavour:
- F.5.3.2.1 To establish and maintain good relations between his/her trade union and its members, and the employer.
  - F.5.3.2.2 To follow all applicable procedures regulating the employer-employee relationship and advise his/her trade union's members to follow these procedures.
  - F.5.3.2.3 To put all his/her time at the disposal of employer/employee interactions.
- F.5.3.3 The SS must represent the interests of the union and its members in accordance with the instructions and mandate of the trade union that elected or nominated him or her.
- F.5.3.4 The SS must report to his/her trade union regarding his/her work, any matter associated with the carrying out of his/her duties and the SS is accountable to his/her trade union with respect to his/her performance as a SS. The trade union must provide the GS of the ELRC with a report of the performance of the SS by the 7<sup>th</sup> of April of each year.
- F.5.3.5 A SS may not interfere with any lawful and legitimate instruction given by the employer or his/her representative to an employee. A SS may not unlawfully interfere with the performance of any employee's duties, failing which; the employer will deal with the SS according to the LRA.
- F.5.3.6 The SS may provide advice to his/her trade union's members. The SS may encourage or direct any of the SS's trade union's members to comply with any lawful decision of his/her trade union.

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F.5.3.7 The SS may exercise all the trade unions' organisational rights and obligations as set out in various statutes of parliament and collective agreements of the ELRC.

F.5.3.8 Right of access

F.5.3.8.1 The SS may meet with educators on the premises of the educational institution or departmental office of the employer; provided that the SS has obtained prior permission from the head of the relevant educational institution or, in the case of a departmental office, the appropriate representative of the employer. Office hours and teaching time does not include tea and lunch breaks.

F.5.3.8.2 The SS may hold meetings with educators provided that:

(a) In the case of educational institutions, the meeting takes place outside the formal teaching or learning day and does not interfere with the functioning of the educational institution.

(b) In the case of an office of the employer, the meeting takes place outside office hours and does not interfere with the functioning of the respective office.

F.5.3.8.3 The SS may only hold meetings with individual educators during office hours or teaching time under the conditions stipulated in the PAM and provided that the SS has the prior approval of the relevant heads of the educational institutions or, in the case of departmental offices, the appropriate representatives of the employer. An SS must, as far as possible, try to meet with an educator outside of actual teaching or learning time.

F.5.3.9 Disclosure of information

A SS is entitled to full disclosure of all relevant information in accordance with and subject to the qualifications provided in section 16 of the LRA and PAIA.

F.5.3.10 Victimisation and prejudice

The employer undertakes not to victimise or prejudice an educator by virtue of:

F.5.3.10.1 His/her election, nomination or appointment as a SS.

F.5.3.10.2 His/her possible election, nomination or appointment as a SS.

F.5.3.10.3 The performance by the SS of his/her duties.

**F.5.4 Withdrawal or termination of the appointment of a SS**

F.5.4.1 A SS's appointment terminates at the end of his/her period of appointment, if applicable.

F.5.4.2 A SS's appointment shall terminate if:

F.5.4.2.1 The SS is transferred to another provincial education department.

F.5.4.2.2 The SS ceases to be a member of the trade union that nominated and elected him or her.

F.5.4.2.3 The SS ceases to be an educator.

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- F.5.4.2.4 The SS resigns in writing as an SS.
- F.5.4.2.5 The SS's appointment is terminated in terms of paragraph F.5.4.3.
- F.5.4.3 A SS may be withdrawn if:
- F.5.4.3.1 The SS accepts a promotion to a higher post level at an institution or into a departmental office based post.
- F.5.4.3.2 If the trade union, which appointed him or her, decides so.
- F.5.4.4 Withdrawal of a SS for misconduct
- F.5.4.4.1 The employer may refer the matter in writing to the SS's trade union, if the employer is not satisfied with the manner in which a SS is conducting himself/herself. In the referral the employer must specify the conduct complained of. A copy of the referral must be sent to the SS.
- F.5.4.4.2 If the matter is not resolved between the employer and the relevant trade union within fourteen (14) days from the date on which the referral referred to in paragraph F.5.4.4.1 reaches the trade union, the employer may refer the matter to the GS of the ELRC for resolution in terms of the ELRC's dispute resolution procedures.
- F.5.4.4.3 The employer may refer the matter to arbitration if the dispute is not settled at conciliation. At arbitration the employer may seek an order withdrawing the SS.
- F.5.4.4.4 The arbitrator, when deciding whether to grant an order withdrawing the SS, must consider amongst others, the following:
- (a) The seriousness of the misconduct complained of.
  - (b) The steps taken to correct the conduct complained of.
  - (c) The inherent nature of the conflict between a trade union and the employer.
  - (d) The SS's and the trade union's freedom of association rights as set out in the LRA.
  - (e) The impact that any order terminating the appointment of the SS will have upon the employer, the trade union, the SS and labour relations generally.
- F.5.4.4.5 Notwithstanding the above, the employer may, where necessary and applicable, follow the disciplinary procedure outlined in the EEA.
- F.5.4.5 In the event of a vacancy arising from the withdrawal of a SS, the trade union concerned may appoint another member as a replacement for the duration of the outstanding period, if applicable.
- F.5.4.6 In the event that the relevant provincial department of education has to appoint another substitute in the place of the new SS and pay the salary for two substitutes, the relevant trade union must bear the cost of the additional substitute, which is payable to the relevant employing department.

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**F.5.5 The trade union's obligations**

- F.5.5.1 The trade unions undertake not to use other trade union representatives, who are not SSs, in activities that take place during the period when these trade union representatives are supposed to be attending to their teaching duties; except in circumstances prescribed in the PAM.
- F.5.5.2 The undertaking in paragraph F.5.5.1 does not:
- F.5.5.2.1 Prevent full-time office-bearers and officials of trade unions from attending to these activities.
- F.5.5.2.2 Affect the right of other union officials/representatives to perform their trade union functions and duties.
- F.5.5.3 The trade union must try to ensure that a SS is available to attend to the functions set out in paragraph F.5.3.
- F.5.5.4 The SS's trade union must pay for all expenses and meet all the other needs associated with the performance of the SS's activities, excluding the SS's remuneration.
- F.5.5.5 The SS must be based at the offices of their trade union in the province to which they are allocated.

**F.5.6 Funding**

- F.5.6.1 The ELRC will fund the provisioning of the SSs as follows:
- F.5.6.1.1 The amount budgeted for the SSs must be divided by the total number of SSs (120) to determine the cost of one SS per annum.
- F.5.6.1.2 The provincial department of education will receive payment, in arrears, for SSs as calculated above, on a 6 monthly basis during November and May of each year.

**F.5.7 Reporting**

- F.5.7.1 The GS of the ELRC shall develop a pro forma guideline to report on the functioning and performance of the SSs as per clause F.5.3 above.
- F.5.7.2 The trade unions, (either at a national or provincial level) would provide such report to the GS of the ELRC on a quarterly basis (7<sup>th</sup> July, 7<sup>th</sup> October, 7<sup>th</sup> January and 7<sup>th</sup> April).
- F.5.7.3 The GS of the ELRC must maintain the privacy and confidentiality of details of grievance and dispute hearings; except for statistical purposes.
- F.5.7.4 The GS of the ELRC must submit a quarterly report, in the accounting officer's report, to the ELRC on the effective utilisation and contributions of the SSs.

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## ANNEXURE F.1

## SS DISTRIBUTION – CURRENT OR EXPIRED

	KZN	EC	LIM	GAU	NW	MPL	WC	FS	NC	TOTAL
Tot. No. of educators	73979	69455	51152	40144	30503	25524	24768	24083	6317	346061
Percentage	15.83	14.16	12.5	11.6	10.8	10	9.16	8.3	7.5	
No. of SS	18	17	15	14	13	12	12	10	9	120
CTU “SADTU”	8	12	10	7	9	9	8	7	7	77
CTU “SAOU”	10	5	5	7	4	3	4	3	2	43

1<sup>ST</sup> AUGUST 2007 TO 31 DECEMBER 2007

	KZN	EC	LIM	GAU	NW	MPL	WC	FS	NC	TOTAL
Tot. No. of educators	77135	65978	52159	41332	29543	30988	24132	24125	6465	351857
Percentage	15.83	14.16	12.5	11.6	10.8	10	9.16	8.3	7.5	
No. of SS	18	17	15	14	13	12	12	10	9	120
CTU “SADTU”	10	13	11	7	9	9	8	6	6	79
CTU “SAOU”	8	4	4	7	4	3	4	4	3	41



## CHAPTER G

### GRIEVANCE PROCEDURE

- G.1 DEFINITIONS
- G.2 OBJECTIVE
- G.3 ADHERENCE TO TIME LIMITS
- G.4 DEALING WITH GRIEVANCES

#### ANNEXURE

##### Annexure G.1 Grievance form

#### G.1 DEFINITIONS

In this procedure, unless the context indicates otherwise-

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

“**educator**” means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school, departmental office or adult basic education centre and who is appointed in a post on any educator establishment under the EEA, 1998.

“**employer**”, in relation to any provision of Chapter 4, 5 or 7 of the EEA, 1998 which applies to, or is connected with –

- (a) an educator in the service of the department of basic education, means the Director-General;
- (b) an educator in the service of a provincial department of education, means the HoD.

“**days**” refers to working days.

“**EEA**” means Employment of Educators Act, 1998 (Act No 76 of 1998).

“**grievance**” means a complaint by an employee or employees affecting the employment relationship of the person or persons concerned, or where there is an alleged misinterpretation, or violation of his or her, or their rights.

“**head of department**” means the incumbent of a post mentioned in Schedules 1, 2 and 3 of the Public Service Act, 1994, or the person acting in such post.

“**Public Service Act**” means the Public Service Act, 1994 (Proclamation No 103 of 1994).

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“**Member of the Executive Council**” means the Member of the Executive Council of a province responsible for the education portfolio of that province.

“**Minister**” means the Minister of Basic Education.

“**recognised trade union**” means all the trade unions admitted to the ELRC as well as any other trade union that enjoys the relevant organisational rights.

“**resolve**” means to settle a grievance to the satisfaction of the aggrieved educator.

“**representative**” means a fellow educator, a representative or official of a recognised trade union.

## **G.2 OBJECTIVE**

### **G.2.1 Purpose and application**

The purpose of this grievance procedure is to address grievances in public education by fulfilling the primary objectives of this procedure which is to promote –

G.2.1.1 Speedy, impartial and equitable handling of grievances.

G.2.1.2 Sound labour relations.

G.2.1.3 Resolution of individual grievances at the lowest possible level in a department.

## **G.3 ADHERENCE TO TIME LIMITS**

G.3.1 In determining adherence to time limits, this should be calculated by excluding the first day and including the last day.

G.3.2 A formal written grievance must be lodged with the employer within 90 days from the date on which the educator became aware of the act or omission which adversely affects him/her.

## **G.4 DEALING WITH GRIEVANCES**

### **G.4.1 Oral interview**

G.4.1.1. A sincere attempt should be made to resolve any grievance by oral interview between a grievant(s) and the head of a school (herein after referred to as “the head”), and in the case of an educational institution outside a school or the head of a school, the supervisor (hereinafter referred to as “the supervisor”), before differences become formalised grievances.

G.4.1.2. During this process no records will be kept of proceedings which will be without prejudice to either of the parties.

### **G.4.2 Formal written grievance: institutional level, (school) and departmental level**

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- G.4.2.1. A grievant(s) may lodge a grievance or grievances with the head or the supervisor in writing within a reasonable period of time, but in any event not later than 90 calendar days following on the time and date on which the alleged grievance or grievances occurred. Full details of the nature of the grievance or grievances must be relayed to the head or the supervisor, as the case may be. The grievant(s) must use the attached Form (Annexure G.1) to formally lodge the grievance. The grievance or grievances must bear the signature or signatures of the grievant(s) and a copy thereof shall be filed with the relevant office of the provincial department of education by the head or supervisor, as the case may be, which office shall be identified by the relevant head of a provincial department in each province.
- G.4.2.2 The head or the supervisor, as the case may be, shall confer with the grievant(s), and others involved, within three (3) working days of receipt of the formal written grievance in order to resolve the grievance. At this meeting the facts shall be presented and considered and an effort shall be made to resolve the matter to the satisfaction of all parties.
- G.4.2.3 The head or the supervisor, as the case may be, shall communicate the outcome to the relevant office of the provincial department of education within five (5) working days of the resolution or non-resolution of a grievance.
- G.4.2.4. If an action or lack of an action, or a decision or lack of a decision, concerns the head or the supervisor, the grievant(s) may refer the matter directly to the regional/district level in respect of a school and departmental level in respect of an institution outside a school, provided that a sincere attempt has been made to resolve the grievance or grievances in terms of the provisions of paragraph G.4.1 above.
- G.4.3. Regional/district level in respect of a school and departmental level in respect of an institution outside a school**
- G.4.3.1. If the grievant(s) is/are not satisfied with the outcome referred to in paragraph G.4.2 above, the grievant(s) may refer the matter in writing, by hand or registered mail, together with the decision of the head or the supervisor, as the case may be, to the regional/district head of education in the case of an educator at a school and in the case of an educator outside a school to the office referred to in paragraph G.4.2.4 within five (5) working days of the parties failing to resolve the grievance or grievances. A copy of the referral must be presented to the head or supervisor, as the case may be, and where applicable, to the grievant(s)' trade union.
- G.4.3.2. The head or the supervisor shall forward his or her comments together with all relevant information on the grievance or grievances to the regional/district head or the office referred to in paragraph G.4.2.4, as the case may be, within five (5) working days after receiving the referral mentioned in paragraph G.4.3 above.
- G.4.3.3. The head of the region/district or the head of the relevant provincial education department, or his/her delegate in respect of an educator outside an educational institution, shall within five (5) working days from the date of receipt of all the parties' referrals, attempt to resolve the grievance or grievances and communicate his or her decision in writing to all parties.

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- G.4.3.4. Should the grievant(s) not be satisfied with the outcome, he or she may register a formal dispute with the GS of the ELRC in terms of the provisions of the ELRC's Constitution.
- G.4.4 A trade union registered with the ELRC may register a grievance with the head or supervisor or the head of a relevant department of education, as the case may be, on behalf of its members individually or collectively and represent such member or members during any stage of this grievance procedure. A non-member(s) may be represented by another employee.
- G.4.5 The parties to a grievance or grievances may by agreement extend the periods referred to in paragraphs G.4.3.1.and G.4.3.2.and G.4.3.3.above.

## Annexure G.1

**GRIEVANCE FORM****PLEASE READ THE FOLLOWING INSTRUCTIONS BEFORE COMPLETING THE FORM**

1. This form must be used to lodge a formal grievance (excluding an alleged unfair dismissal) when you are dissatisfied with an act or omission and you have been unable to resolve the problem by using informal discussion.
2. You have to lodge your grievance within 90 days from the date on which you became aware of the act or omission which adversely affects you.
3. You may be assisted or represented by a fellow educator or a representative or official from a recognised trade union.
4. It is important to complete all information accurately. When the form is completed, it must be given to the person designated to facilitate grievances at your institution. The department will attach this form to the grievance documentation and it will be used through all stages of the grievance procedures.
5. At each stage where a person within the relevant structure of authority attempts to resolve the grievance, each party will complete the appropriate part of the form. You will be given an opportunity to respond to each and every comment.
6. At the conclusion of each stage of the grievance procedure, the head or supervisor will provide you with a copy of the completed form.
7. Once the grievance has been resolved, you do not need to complete the rest of the form.
8. You are required to complete Parts A and B of this form and to then hand it to the head or the supervisor, as the case may be, at your institution/office. The head or the supervisor, as the case may be, will affix his/her signature in the block below Part B of the form to indicate that the grievance has been received. Ensure that you receive a copy of the form where receipt of your grievance has been acknowledged.
9. Part C of the grievance form will be completed by the head or the supervisor, as the case may be, and grievant(s) will be provided with copy during the various stages where attempts will be made to resolve the grievance.

**PART A: PERSONAL PARTICULARS***To be completed by the aggrieved educator*

INITIALS AND SURNAME

PERSONAL NUMBER

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REGION/DISTRICT		
SCHOOL / OFFICE		
RANK / POST LEVEL		
DATE ON WHICH YOU BECAME AWARE OF THE ACT OR OMISSION		
PERSONAL CONTACT DETAILS	TEL:	CELL:
	FAX:	
CONTACT DETAILS OF REPRESENTATIVE	TEL:	CELL:
NAME OF TRADE UNION		
CONTACT DETAILS OF TRADE UNION	TEL:	FAX:
<b>PART B: DETAILS OF THE GRIEVANCE</b> <i>To be completed by the aggrieved educator(s)</i>		
<b>What are you aggrieved about?</b> <i>(If space below is not enough, please attach additional page(s)):</i>		
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
<b>What solution do you propose?</b>		
<hr/> <hr/> <hr/>		
<b>SIGNATURE:</b> _____	<b>DATE</b> _____	
Receipt of grievance form acknowledged and a copy given to aggrieved educator(s)		
<b>SIGNATURE</b> _____	<b>DATE:</b> _____	
<b>NAME:</b> _____	<b>RANK:</b> _____	

<b>PART C: GRIEVANCE RESOLUTION: LEVELS</b>
<b>NOTES:</b> <i>This part of the form makes provision for levels of authority to attempt to resolve the grievance, depending on the circumstances, one or more pages below need to be completed.  The grievance must be dealt with by the applicable levels within the periods referred to in the procedure, unless extended by agreement with the aggrieved educator.  Should the grievance not be attended to within the periods referred to in the procedure or extended period agreed to with the aggrieved educator(s), in the case of an alleged unfair labour practice, the aggrieved educator(s) has/have the right to refer a dispute to the Education Labour Relations Council to</i>

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<i>be dealt with in terms of the dispute resolution procedures.</i>			
<i>To be completed on behalf of the Head of Department</i>			
<b>NAME OF OFFICIAL</b>			
<b>DESIGNATION</b>			
<b>RELATIONSHIP WITH AGRIEVED EDUCATOR</b>	<b>SUPERVISOR/ HEAD</b>	<b>COMPONENT HEAD</b>	<b>DISTRICT HEAD/DIRECTOR</b>
<b>TEL:</b>	<b>CELL:</b>	<b>FAX:</b>	
<b>Was the grievance resolved?</b>	<b>Yes</b>		<b>No</b>
Comments by the aggrieved educator(s) if necessary			
_____			
_____			
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_____			
_____			
<b>SIGNATURE:</b> _____ <b>DATE:</b> _____			
<b>On behalf of Employer</b>			
<b>NAME:</b> _____		<b>RANK:</b> _____	
<b>Was the grievance resolved</b>	<b>Yes</b>		<b>No</b>
Comments by the aggrieved educator(s) if necessary			
_____			
_____			
_____			
_____			
_____			
_____			
_____			
_____			
<b>SIGNATURE</b> _____ <b>DATE:</b> _____			
<b>EDUCATOR</b>			

<b>PART D : REGION/DISTRICT OR DEPARTMENTAL LEVEL</b>	
<i>To be completed on behalf of the Head of Department</i>	
<b>NAME OF OFFICIAL</b>	
<b>DESIGNATION</b>	

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RELATIONSHIP WITH AGRIEVED EDUCATOR	DISTRICT/REGIONAL HEAD	COMPONENT HEAD	DIRECTORATE
TEL: _____	CELL: _____	FAX: _____	
<b>Decision in respect of the grievance and reasons for the decision (If space below is not enough, please attach additional page(s)):</b> _____			
SIGNATURE: _____		DATE: _____	
On behalf of Employer			
NAME: _____		RANK _____	
Was the grievance resolved	Yes	<input type="checkbox"/>	No <input type="checkbox"/>

<b>If no, the aggrieved educator (s) must explain why she/he or they are still dissatisfied</b> _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____
SIGNATURE _____ DATE: _____ EDUCATOR



**CHAPTER H****LEAVE MEASURES**

- H.1**        **DEFINITIONS**
- H.2**        **LEGISLATIVE FRAMEWORK**
- H.3**        **GENERAL PROVISIONS**
- H.4**        **ANNUAL LEAVE**
- H.5**        **SICK LEAVE**
- H.6**        **LEAVE FOR OCCUPATIONAL INJURIES AND DISEASES**
- H.7**        **SPECIAL LEAVE FOR QUARANTINE PURPOSES**
- H.8**        **MATERNITY LEAVE, PRE-NATAL AND PATERNITY LEAVE**
- H.9**        **ADOPTION AND SURROGACY LEAVE**
- H.10**      **FAMILY RESPONSIBILITY LEAVE AND SPECIAL LEAVE FOR URGENT PRIVATE AFFAIRS**
- H.11**      **SPECIAL LEAVE FOR PROFESSIONAL AND PERSONAL DEVELOPMENT AND FOR RELIGIOUS OBSERVANCES**
- H.12**      **SPECIAL LEAVE FOR STUDY PURPOSES**
- H.13**      **SPECIAL LEAVE FOR EXAMINATION PURPOSES**
- H.14**      **SPECIAL LEAVE FOR PARTICIPATING IN SPORTING, CULTURAL AND OTHER EVENTS**
- H.15**      **SPECIAL LEAVE IN EXTRAORDINARY CIRCUMSTANCES**
- H.16**      **UNPAID LEAVE**
- H.17**      **UNPAID LEAVE FOR CONTINUITY OF SERVICE**
- H.18**      **LEAVE PROVISIONS FOR TEMPORARY EDUCATORS**

**ANNEXURE**

- Annexure H.1      Application for leave of absence: school-based educators
- Annexure H.2      Application for leave of absence: office-based educators
- Annexure H.3      Agreement: Special leave for study purposes

**H.1**        **DEFINITIONS**

“*education institution*” is a public school, training institution or adult education centre as defined in the EEA or any other institution that provides specialised tuition and where learning activities are discontinued during institution closure periods.

“*institution closure period*” is the scheduled period that education institutions close at the end of each term and during which period teaching and learning activities are discontinued.

“*institution-based educator*” means an educator who is employed at an education institution and whose normal duties are discontinued during institution closure periods.

“*office-based educator*” means an educator who is not an institution-based educator.

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“remuneration” means –

- (a) In respect of school-based educators and office-based educators who are not members of the MMS:
  - (i) For purposes of calculating pay for unused annual leave and severance pay, remuneration means the educator’s annual salary PLUS 37% of his/her basic salary.
  - (ii) For purposes of calculating capped leave and unpaid leave, remuneration means the educator’s annual basic salary.
- (b) In respect of office-based educators who are members of the MMS:
  - (i) For purposes of calculating pay for unused annual leave, unpaid leave and severance pay, remuneration means the educator’s all inclusive remuneration package.
  - (ii) For purposes of calculating capped leave, remuneration means the educator’s annual basic salary (*paragraph 4.6 of the Determination and directive on leave of absence in the public service, August 2012*).

“*scheduled working time*” in respect of institution-based educators means –

- (a) All the time during a school term, both during and outside the formal school day, that institution-based educators must perform duties in terms of the measures in Chapter A.
- (b) Days during an institution closure period that have been scheduled by the Minister, in accordance with NEPA for these educators to report for administrative duties or by the HoD for these educators to report for in-service training in terms of paragraph A.4.2 of Chapter A of these measures.

“Current leave cycle” means the leave accrued by office-based educators as from 1 January of the current year of employment up until 31 December of the same year.

“Capped leave” is the leave accrued by all educators up until 31 December 2001, which is payable upon early or normal retirement, death or medical boarding.

Note: In the case of educators employed by the DBE, reference to HoD means Director-General.

## **H.2 LEGISLATIVE FRAMEWORK**

ELRC Collective Agreement No. 7 of 2001  
Government Gazette No. 22961 of 2001, dated 19 December 2001 (Leave measures)  
PSCBC Resolution No. 7 of 2000  
Government Gazette No. 29248, dated 22 September 2006 (PILIR)  
Government Gazette No. 28264, dated 25 November 2005 (8-week rule)

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Determination and directive on leave of absence in the public service (Department of Public Service and Administration, August 2012)  
Labour Relations Act of 1995, as amended  
Basic Conditions of Employment Act, 1997  
Employment of Educators Act, 1998  
PSCBC Resolution 1 of 2012  
Government Gazette No. 38249, dated 27 November 2014

**H.3 GENERAL PROVISIONS**

- H.3.1 The employer may determine that an attendance register be kept in which an educator must record the time of his/her arrival at and departure from his/her place of duty. (*Regulation 24 of the Regulations regarding the terms and conditions of employment of educators*)
- H.3.2 Z1 (a) form as amended by the Minister of Public Service and Administration in terms of paragraph 6 of Schedule 1 of the Public Service Regulations, 2001 as amended, is the official government leave form to be used to record the types of leave applied for by an office based educator.
- H.3.3 School-based educators must use the attached leave form (Annexure H.1) referred to as APPLICATION FOR LEAVE OF ABSENCE: SCHOOL-BASED EDUCATORS.
- H.3.4 In interpreting Section B of the leave form for school-based educators, principals (school managers) must keep manual records of the utilisation of leave in Section B and or capped leave applied for as part of a day.
- H.3.5 After reaching the prescribed daily number of working hours for a specific type of leave, the principal must cause the educator to complete and submit a leave form.
- H.3.6 Different types of leave must not be combined to reach the daily number of working hours e.g. do not combine pre-natal leave, normal sick leave and/or family responsibility leave to reach the prescribed daily number of working hours.
- H.3.7 The application for leave of absence form must not be used as a sanction for offences related, for example, to late coming. Instead the normal disciplinary measures contained in Schedule 2 of the EEA must be used.

**H.4 ANNUAL LEAVE****H.4.1 General measures**

- H.4.1.1 Educators are entitled to annual leave with full pay during each leave cycle of 12 months, commencing on 1 January of each year.
- H.4.1.2 An educator retains all his/her leave credit when he/she is transferred within a department or between state departments without a break in service.

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H.4.1.3 Unless indicated otherwise in these measures, days of leave granted in respect of any category of leave, other than annual leave, will not be deducted from an educator's leave provision in respect of annual leave.

H.4.1.4 An educator will not be considered to be on leave if he/she:

H.4.1.4.1 Must appear as a witness-

- (a) In any court.
- (b) In misconduct proceedings or in a misconduct investigation in terms of any law.
- (c) At inquest proceedings.
- (d) Before a commission or committee appointed by the state or before any committee or institution instituted by or in terms of any act.

H.4.1.4.2 Appears as defendant or co-defendant in civil proceedings arising from his/her official duties and in which the state or any statutory body or institution has a direct interest.

H.4.1.4.3 Is taken into custody or must appear in any court on a criminal charge and the offence he/she is charged with is withdrawn or if he/she is acquitted of such offence.

H.4.1.4.4 Attends or participates in a training program required by the employer or the professional body with whom he/she is required to register in order to remain registered or with the approval of the employer attends or participates in a training program or other activity that is in the employer's interest.

#### **H.4.2 Annual leave entitlement of institution-based educators**

H.4.2.1 An institution-based educator will be regarded as being on annual leave during institution closure periods that are outside of scheduled working time, provided that the measures regarding the workload, duties and responsibilities of educators may require such an educator to perform some of his/her normal duties, such as preparation for the new school term or the marking of internal examination scripts, during such periods. However, such an educator will not be required to report at any work place to perform any of these duties.

H.4.2.2 If, after sufficient notice, an institution-based educator is required by the employer to report for official duty during an institution closure period outside the scheduled working time, he/she will be remunerated additionally for the performance of such duties in terms of the applicable measures in Chapter C. Such remuneration will not apply in respect of the voluntary performance of duties by an educator during an institution closure period.

H.4.2.3 Save for leave accrued in terms of paragraph H.4.5.1., an institution-based educator does not accrue any leave credit for purposes of payments, for carry over to a next leave cycle, or for extending other forms of leave.

#### **H.4.3 Annual leave entitlement and measures in respect of office-based educators**

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- H.4.3.1 The main purpose of annual leave is to provide periods of rest to an office-based educator but, subject to these measures, may also be used to extend periods of other categories of leave as provided in these measures.
- H.4.3.2 An educator is entitled to annual leave with full pay during each leave cycle of 12 months, commencing on 1 January of each year, except if appointed after 1 January of each year.
- The full year leave entitlement of an office-based educator is –
- 22 working days in respect of an educator with less than 10 years service.
- 30 working days in respect of an educator with 10 or more years of service.
- H.4.3.3 The annual leave entitlement of an educator appointed after 1 January of each year will be calculated proportionally in relation to each full month of service at a rate of 1,83 working days if entitled to 22 working days, and 2,5 working days if entitled to 30 working days annual leave in a leave cycle.
- H.4.3.4 Temporary educators appointed for a fixed period and educators appointed in a part-time or shared capacity, will be granted annual leave on a pro rata basis.
- H.4.3.5 Annual leave should be planned and scheduled at least at the start of a leave cycle, i.e. January of each year.
- H.4.3.6 For each 15 consecutive days' leave taken without pay, the educator's annual leave entitlement is reduced by 1/24<sup>th</sup>.
- H.4.3.7 For the purpose of granting annual leave, working days mean Monday to Friday, excluding public holidays.
- H.4.3.8 At least 10 working days must be taken as leave days during the annual leave cycle. The utilisation of this leave must take the service delivery requirements of a department into account. Annual leave should, as far as possible, be taken as consecutive working days.
- H.4.3.9 The remaining leave days, if any, must be taken no later than 6 months no later than 6 months after the expiry of the relevant leave cycle, where-after, unused leave credits will be forfeited.
- H.4.3.10 An educator must submit his/her application for annual leave in advance, unless unforeseen circumstances prevent him/her from doing so. In such a case the educator must submit an application for annual leave personally or through a relative, fellow employee within 5 working days after the first day of absence.
- H.4.3.11 An application for annual leave may not be unreasonably refused. The head of the office/supervisor must take into account service delivery requirements when approving the leave.
- H.4.3.12 If due to the employer's service delivery requirements an office-based educator's application for leave is denied by the employer and not rescheduled, such leave must, upon

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request, be paid out to the educator at the end of the 6 months' period referred to in paragraph H.4.3.9 above. An educator's request for payment of unused leave credits must be:

H.4.3.12.1 In writing.

H.4.3.12.2 Accompanied by written proof of refusal of leave by the employer or of instruction to report for duty as the case may be.

H.4.3.12.3 Lodged by no later than the end of the relevant 6 months' period.

H.4.3.13 HoDs must, at the end of the relevant 18 months' period, report to the relevant legislature on the number of educators denied annual leave, reasons for such denial and the amount paid in this regard.

H.4.4.14 Educators must be cautioned timeously, at the end of the relevant cycle, they have not utilised their leave entitlements.

H.4.3.15 An educator who is appointed after the commencement of an annual leave cycle or whose service is terminated during a leave cycle will, in respect of such cycle, be entitled to annual leave on a pro rata basis determined as a fraction of his/her entitlement:

H.4.3.15.1 For purposes of utilising leave entitlements, fractions or decimals must be utilised as they are, in other words, fractions or decimals must not be rounded off.

H.4.3.15.2 Provincial departments of education must keep records of the utilisation of fractions/decimals and leave forms must be completed for every eight hours fractions and/or leave taken.

H.4.3.15.3 For purposes of converting fractions/decimals of leave entitlements into working hours the following formula(e) should apply:

**Converting fractions into hours:**

$$A \times B = C$$

Where –

A = represents the number of working hours per day

B = represents the fraction

C = represents the credit in hours

For example: Employee with 7,45 leave credits:  
 $8 \times 0.45 = 3.6$  hours

**Converting fractions into minutes:**

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$$60 \times B = C$$

Where –

60 = represents the minutes in an hour

B = represents the fraction

C = total credits in minutes

For example: Employee with 3.6 hours leave credit  
 $60 \text{ min} \times 0.60 = 36 \text{ min}$

H.4.3.15.4 For purposes of leave payouts, fractions or decimals must be used as they are in the formula provided for in paragraphs H.4.3.6 and H.4.4.3.

H.4.3.15.5 Unused fractions and decimals lapse at the end of the six months period referred to in paragraph H.4.3.12.

H.4.3.15.6 If an educator's leave entitlement changes, e.g. from 22 to 30 working days per annum after ten years satisfactory service, the unused fractions or decimals must also be carried over to the new category and be administered manually.

#### **H.4.4 Payout of unused leave credit (office-based educators)**

H.4.4.1 Office-based educators must be paid the cash value in respect of unused leave credit upon termination of service and in terms of paragraph H.4.3.9 above. The payment will be limited to a maximum number of days, equivalent to the annual leave entitlements.

H.4.4.2 The leave cycle remains unchanged, therefore, requests and motivations for leave payments in respect of leave credits mentioned in paragraph H.4.3.9 above, must be lodged by no later than 31 July in respect of each year. If an educator failed to apply for the payment of such unused leave credits at the mentioned date, such leave credits will be forfeited.

H.4.4.3 Payment of annual leave credits will be calculated by using the educator's remuneration.

H.4.4.4 For all terminations in respect of office-based educators without any capped leave, leave payouts will be calculated in terms of the following formula:

$$\frac{\{(A - B) + (C - D)\} \times E}{260.714}$$

Where:

A = represents the full annual or pro rata leave entitlement in respect of the previous leave cycle. Pro-rata entitlement calculated as

$$\frac{X \times Y}{12}$$

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Where –

X = Number of completed months of service;

Y = Annual leave entitlement per leave cycle.

B = represents the leave taken in the previous leave cycle

C = represents the pro rata leave entitlement in the current leave cycle (calculated as above)

D = represents the leave taken in the current leave cycle

E = Represents the educator's remuneration (annual basic salary plus 37% and in the case of a member of the MMS, the all inclusive package) as at the last day of duty or at the end of the 6 months period mentioned in H.4.3.9 above.

H.4.4.5 For personnel who still have unused leave credits at the expiry of the 6 months period mentioned above, and who complied with the provisions of paragraph H.4.3.9, leave payouts will be calculated in terms of the following formula:

$$\frac{(A - B) \times C}{260.714}$$

Where:

A = represents the full annual or pro rata leave entitlement in respect of the previous leave cycle. Pro-rata entitlement calculated as

$$\frac{X \times Y}{12}$$

Where –

X = Number of completed months of service;

Y = Annual leave entitlement per leave cycle.

B = represents the leave taken in the previous leave cycle

C = Represents the educator's remuneration (annual basic salary plus 37% and in the case of a member of the MMS, the all inclusive package) as at the last day of duty or at the end of the 6 months period mentioned in H.4.3.9 above.



*PERSONNEL ADMINISTRATIVE MEASURES (PAM)***H.4.5 Annual leave accrued prior to 1 July 2000 and during the period 1 July 2000 to 31 December 2001**

H.4.5.1 Educators shall retain all audited leave credits accrued prior to 1 July 2000. The number of accrued leave days prior to 1 July 2000 shall be converted to working days using the following formula:

$$\frac{A \times 5}{7}$$

Where:

A = represents the number of audited leave credits

H.4.5.2 During the periods 1 July 2000 to 31 December 2000 and 1 January 2001 to 31 December 2001 all institution-based educators accrued 5 and 10 working days leave respectively or a pro rata number of such days calculated. Any of these days that were not granted to such an educator since 1 July 2000 shall be added to the number of leave days accrued prior to 1 July 2000.

H.4.5.3 The payouts in respect of such leave credits must be made in the event of:

H.4.5.3.1 Death

H.4.5.3.2 Retirement, including early retirement.

H.4.5.3.3 Medical boarding.

H.4.5.4 The leave payout in respect of educators with capped and audited leave credits will be determined in the following manner:

$$\frac{\{(A - B) + (C - D)\} \times E + (F \times G)}{260.714}$$

Where –

A = represents the educator's full annual or pro rata leave entitlement in respect of the previous leave cycle

B = represents the leave taken in the previous leave cycle

C = represents the pro rata leave entitlement in the current leave cycle

D = represents the leave taken in the current leave cycle

E = represents the educator's remuneration (annual basic salary plus 37% and in the case of a member of the MMS, the all inclusive package) as at the last day of duty

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F = represents the capped leave credits

G = represents the educator's remuneration (annual basic salary only) as at the last day of duty

H.4.5.5 The HoD must determine whether there are periods which are unaudited and in such instances, the educator's leave payout shall be paid on the basis of 6 days per completed year of service up to a maximum of 100 days in respect of the unaudited leave period. The formula in calculating the payout in respect of these days shall be as per paragraph H.4.5.4 above.

H.4.5.6 The HoD must determine procedures and measures in keeping with service delivery needs, on how educators will be allowed to utilise their leave credits accrued prior to the applicable dates referred to in paragraph H.4.5.1 above over and above the normal vacation entitlements.

#### **H.4.6 Nomination of beneficiaries and leave payouts**

H.4.6.1 An educator may, if he/she so desires, designate one or more beneficiaries to whom their leave credits may be paid in the event of their death.

H.4.6.2 If an educator dies and has not nominated a beneficiary, the leave credits may be paid:

H.4.6.2.1 In full to the spouse/life partner of that educator; or

H.4.6.2.2 If there is no spouse/life partner, in equal shares for the benefit of minor and other children (including legally adopted children) of the deceased who, at the time of her or his death, were fully dependent on the educator; or

H.4.6.2.3 If there are no children, to the educator's estate.

#### **H.4.7 Annual leave with full pay granted in excess (office-based educators)**

H.4.7.1 An educator may not be granted annual leave with full pay in excess of that which the educator has to his/her credit, including leave credit in terms of paragraph H.4.5.1 above.

H.4.7.2 If due to a bona fide error, an educator has been granted annual leave with full pay in excess of that which stood to her or his credit at that time, such over- grant must be deducted from the subsequent leave cycle.

H.4.7.3 If an educator who has been over-granted annual leave with full pay exits the service of the state, such over-grant must be regarded as an overpayment that must be recovered from her or him. The over-payment should be determined according to the following formula:

$$\frac{A \times B}{260.714}$$

Where –

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A = represents the educator's remuneration (annual basic salary plus 37% and in the case of a member of the MMS, the all inclusive package)

B = represents the number of days annual leave over-granted

260.714 = represents the number of working days in a year

**H.5 SICK LEAVE****H.5.1 General**

H.5.1.1 In the event where an educator has to –

H.5.1.1.1 Consult a doctor, therapist etc. for reasons related to the educator's health/wellness, or

H.5.1.1.2 Go for training related to disability, e.g. a blind educator who has to get training with his/her guide dog, or

H.5.1.1.3 Go for maintenance work for equipment used as a result of his/her disability, the HoD may grant such educators time off in terms of the sick leave provisions.

H.5.1.2 Where an educator is absent for a part of the day, the HoD could manually record such time off until a full day is completed as sick leave.

H.5.1.3 Fractions of sick leave entitlements may be converted using the formula in paragraph H.4.3.15.3.

**H.5.2 Normal sick leave**

H.5.2.1 Educators are entitled to 36 working days sick leave with full pay over a three-year cycle. Unused sick leave credits shall lapse at the expiry of the three-year cycle.

H.5.2.2 It is incumbent on the educator to utilise and manage his/her normal sick leave responsibly and with circumspect.

H.5.2.3 An educator must submit his/her application for sick leave in respect of clinical procedures in advance, unless the treating practitioner certifies that such procedures have to be conducted as an emergency.

H.5.2.4 If an educator is unable to report for duty due to sudden illness, he/she must immediately notify his/her immediate supervisor of her or his inability to report for duty. An educator must submit an application for sick leave personally or through a relative, fellow educator within 5 working days after the first day of absence.

**H.5.2.5 Medical certificates**

H.5.2.5.1 Educators who apply for three or more sick leave days must submit a medical certificate. For purposes of normal sick leave medical certificates issued and signed by the practitioners and persons who are certified to diagnose and treat patients, and who are

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registered with the following professional councils established by an Act of Parliament shall be accepted:

- (a) The Health Professions Council of South Africa.
- (b) The Allied Health Professions Council of South Africa.
- (c) The South African Nursing Council.

H.5.2.5.2 A medical certificate must contain the following information:

- (a) The name, address and qualifications of the practitioner or person
- (b) The name of the patient.
- (c) The employment number of the patient (if applicable).
- (d) The date and time of examination.
- (e) Whether the practitioner is issuing the certificate as a result of personal observations during an examination received from the patient and which is based upon acceptable medical grounds.
- (f) If the patient has given informed consent for it to be disclosed, a description of the nature and extent of the illness or injury in layperson's language.
- (g) Whether the patient is totally indisposed for duty or whether the patient will be able to perform less strenuous duties in the work situation.
- (h) The exact period of recommended sick leave.
- (i) The date of issue of the certificate of illness.
- (j) A clear indication of the identity of the practitioner or person who issued the certificate.
- (k) The initial and surname in block letters, and the registration number of the practitioner who issued the certificate.

H.5.2.5.3 The HoD must accept medical certificates that do not describe the nature and extent of an educator's illness for sick leave taken during the normal sick leave cycle. The employer may request from the educator a medical certificate describing the nature and extent of the illness before granting sick leave, if the educator abuses the system during the normal sick leave period (e.g. a pattern of regular sick leave on Mondays and Fridays).

H.5.2.5.4 For purposes of temporary incapacity leave the employer only accepts medical certificates issued and signed by practitioners registered with the Health Professions Council of South Africa. and who are legally certified to diagnose and treat patients. Such medical

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certificates must describe that the illness or injury is temporary and, if the educator has given his/her informed consent, the nature and extent of the educator's illness or injury.

H.5.2.6. If the employer establishes a pattern/trend in the educator's utilisation of normal sick leave, the employer must require the educator to submit a medical certificate from a practitioner or person listed above, for periods of sick leave absences of less than 3 days.

H.5.2.7 If an educator in his/her first 36 days normal sick leave period, who has been absent from work on more than two occasions during an eight-week period, must regardless of the duration of the sickness or injury, submit a medical certificate stating that the educator was unable to work for the duration of the employee's absence due to sickness or injury.

Any subsequent day of absence due to sickness or injury after the above-mentioned period must then be regarded as the first day of the next 8-week period. If the educator fails to submit the required medical certificate, the head of the institution must notify the educator that if the prescribed medical certificate is not received within 2 working days, the sick leave period will be deemed to be leave without pay. If the educator fails to submit the medical certificate on time, the relevant absence must be covered by annual leave (with the educator's consent), and or unpaid leave, if insufficient annual leave credits are available, and if the educator failed to notify the head of the institution of his/her choice. Failure by the educator to submit his/her medical certificate within the stated period must be viewed in a serious light and disciplinary steps against the educator should be taken.

H.5.2.8 If an educator falls ill whilst on annual leave with full pay, such leave may be converted to sick leave provided that a certificate from a registered medical practitioner is submitted to substantiate that he/she is ill.

H.5.2.9 For every 15 consecutive calendar days leave taken without pay, an employee's sick leave entitlement must be reduced by 1/72<sup>nd</sup> per sick leave cycle.

H.5.2.10 Vacation leave without pay may not be converted into sick leave.

### **H.5.3 Temporary incapacity leave**

H.5.3.1 Incapacity leave is not an unlimited number of additional sick leave days at an educator's disposal. Incapacity leave is additional sick leave granted conditionally at the employer's discretion, and must be read with the *Policy and Procedure on Incapacity Leave for Ill-Health Retirement (PILIR)* determined by the Minister for Public Service and Administration and made applicable to educators by the Minister of Basic Education in Government Gazette No. 29248, dated 22 September 2008.

H.5.3.2 An educator whose normal sick leave credits in a three year-cycle (36 days), have been exhausted during the prescribed sick leave cycle, and who, according to the relevant practitioner, requires to be absent from work due to a temporary incapacity may apply for temporary incapacity leave with full pay on the applicable application form prescribed by in terms of PILIR in respect of each occasion.

H.5.3.3 For an educator's application for temporary incapacity leave to be considered, –

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- H.5.3.3.1 The educator must submit sufficient proof that he/she is too ill/injured to perform his/her work satisfactorily.
- H.5.3.3.2 An application form must, regardless of the period of absence, be accompanied by a medical certificate issued and signed by a medical practitioner that certifies his/her condition as temporary incapacity and if the educator has consented, the nature and extent of the illness/injury.
- H.5.3.3.3 The educator is, in accordance with item 10(1) of Schedule 8 to the LRA, afforded the opportunity to submit, together with his/her application form –
- (a) Any medical evidence related to the medical condition of the employee, such as a medical report(s) from a specialist, blood results, x-ray results or scan results, obtained at the employee's expense; and .
  - (b) Any additional written motivation supporting his/her application.
- H.5.3.3.4 The educator is requested to give his/her consent that medical information/records be disclosed to the employer and/or its Health Risk Manager and to undergo further medical examinations in terms of the assessment process described in the PILIR.
- H.5.3.4 An educator must submit his/her application for temporary incapacity leave in respect of clinical procedures in advance, unless the treating medical practitioner certifies that such procedures have to be conducted as an emergency.
- H.5.3.5 If overcome by sudden illness/injury, the employee must personally notify his/her supervisor/manager immediately. A verbal message to the supervisor/manager by a relative, fellow educator or friend is only acceptable if the nature and/or extent of the illness/injury prevents the educator to inform the supervisor/manager.
- H.5.3.6 An educator must submit an application for temporary incapacity leave personally or through a relative, fellow educator or friend within 5 working days after the first day of absence.
- H.5.3.7 If the educator fails to submit an application within the prescribed 5 working days, the following measures will apply:
- H.5.3.7.1 The educator's manager/supervisor must immediately notify the employee that if such application is not received within 2 working days, the sick leave period will be deemed to be leave without pay. If the educator fails to submit the application on time or compelling reasons why an application cannot be submitted, the supervisor/manager must immediately inform the Human Resource division and the relevant authority will approve such absence as unpaid leave or annual leave if the educator consents. The educator's supervisor/manager/HoD must within two working days from receipt of the leave application form recommend/no recommend and/or approve/disapprove the leave application and submit to the relevant Human Resource division.
- H.5.3.7.2 Failure by the educator to provide his/her application form within the stated periods, or failure by the supervisor/manager to properly manage it, must be viewed in a serious light.

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- H.5.3.8 The HoD must, within 5 working days from the receipt of the educator's application for temporary incapacity leave –
- H.5.3.8.1 Conditionally grant a maximum of 30 consecutive working days temporary incapacity leave with full pay subject to the outcome of his/her investigation into the nature and extent of the employee's illness/injury: and
- H.5.3.8.2 Refer the application with all the supporting evidence immediately to the Health Risk Manager in accordance with the PILIR for an assessment and advice –
- (a) On whether the educator's illness/injury justifies the granting of incapacity leave.
- (b) Which steps, if any, in accordance with Schedule 1 of the EEA, read with the procedures contained in item 10(1) of Schedule 8 of the LRA.
- H.5.3.9 The HoD may request the educator, if he/she has consented thereto in his/her application form, to subject him/herself for one or more medical examinations by medical practitioners of the employer's choice and for the employer's account. If the educator fails to honour the appointment for such medical examinations, the educator shall be held responsible for any fruitless expenses incurred.
- H.5.3.10 The HoD must, within 30 working days after receipt of both the application form and medical certificate, approve or refuse the temporary incapacity leave granted conditionally. In making a decision, the HoD must apply his/her mind to the medical certificate (with or without describing the nature and extent of the illness or injury) medical information/records (if the employee consented to disclosure), the Health Risk Manager's advice, the information as supplied by the educator and all other relevant information available to the HoD and based thereon approve or refuse the temporary incapacity leave granted conditionally, on conditions that the HoD may determine, e.g. return to work etc..
- H.5.3.11 The HoD may on the basis of medical evidence gathered during its investigation approve the granting of additional incapacity leave days on conditions that he/she must determine. The HoD may for this purpose grant conditionally further temporary incapacity leave.
- H.5.3.12 The HoD, if applicable and as soon as possible, must after receipt of the Health Risk Manager's advice, decide on the possibility of securing alternative employment for the educator, or adapting his/her duties or work circumstances to accommodate his/her incapacity or alternative employment and, as soon as possible approve and implement an action plan for this purpose.
- H.5.3.13 If the HoD –
- H.5.3.13.1 Approves the temporary incapacity leave conditionally, such leave must be converted into temporary incapacity leave; or
- H.5.3.13.2 Refuses the temporary incapacity leave granted conditionally; he/she must notify the educator in writing –

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- (a) Of the refusal;
  - (b) Of the reasons for refusal;
  - (c) That he/she must notify the HoD in writing within 5 working days of the date of notice to him/her whether or not the period of conditional incapacity leave must be covered by annual leave (to the extent of the available annual leave credits) or unpaid leave and that, if he/she fails to notify the HoD/DG of his/her choice, the period will be covered by unpaid leave; and
  - (d) The educator may, if he/she is not satisfied with the HoD's/DG's decision, lodge a grievance in terms of Chapter G of the PAM.
- H.5.3.14 The HoD must cover the period of absence in accordance with the employee's written notification or, if the educator fails to notify the HoD/DG or if the annual leave credits are insufficient, the relevant period of absence must be covered by unpaid leave.
- H.5.4 **Permanent incapacity leave** (*Policy and Procedure on Incapacity Leave for Ill-Health Retirement determined by the Minister for Public Service and Administration in terms of sec. 3(3)(c) of the Public Service Act, 1994, and made applicable to educators by the Minister of Basic Education in Government Gazette No. 29248, dated 22 September 2008.*)
- H.5.4.1 An educator shall not directly access or apply for permanent incapacity leave. The HoD may grant an educator up to a maximum of 30 working days' permanent incapacity leave once he/she has, following the assessment and investigations contemplated in paragraph H.5.3.8.2 determined that the educator's condition is of a permanent nature.
- H.5.4.2 The HoD must during the period referred to in paragraph H.5.3.1 and in accordance with the advice from its Health Risk Manager ascertain the feasibility of and implement its plan of action contemplated in paragraph H.5.3.12, above, in respect of –
- H.5.4.2.1 Alternative employment; or
  - H.5.4.2.2 Adapting duties or work circumstances to accommodate the educator.
- H.5.4.3 An educator, whose degree of incapacity has been certified as permanent but who can still render a service, may be redeployed horizontally with retention of his/her benefits.
- H.5.4.4 If the redeployment necessitates reallocation to a job of a lower grading, such must be explained well in advance and the continued utilisation of such an educator should, in this regard, be with her or his consent.
- H.5.4.5 In instances where the educator's redeployment entail retraining or retooling, the employer must take requisite resources (time and financial) and potential returns into consideration before approving redeployment.
- H.5.4.6 The transfer of an educator should ensure the optimal utilisation of his/her competencies and must not compromise service delivery.



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H.5.4.7 If both the HoD and educator are convinced that the educator will never be able to render an effective service at his/her level or rank, the educator/employer may proceed with the process of termination of service on account of continued ill-health in terms of the EEA.

H.5.4.8 The HoD may extend the period of permanent incapacity leave referred to in paragraph H.5.4.1 by a further 30 working days in order to finalise processes already commenced. If the processes set out in this Chapter are not completed within the 60 working days, the HoD must report the case to the DG of the DBE together with a report explaining the reasons for the delay.

**H.6 LEAVE FOR OCCUPATIONAL INJURIES AND DISEASES**

H.6.1 An educator who, as a result of his/her work suffers occupational injuries or contract occupational diseases, shall be granted occupational injury and diseases leave for the duration of the period that he/she cannot work.

H.6.2 If an educator suffers a work related injury as a result of an accident involving a third party, the HoD shall grant her/him occupational injury leave provided that the employee:

H.6.2.1 Submits to the HoD medical forms as prescribed in the Occupational Injuries and Diseases Act, 1993.

H.6.2.2 Brings his/her claim for compensation against the third party.

H.6.2.3 Undertakes to apply for compensation for the cost arising from the accident in terms of the Compensation for Occupational injuries and Diseases Act 1993.

H.6.3 The HoD shall take reasonable steps to assist an educator to claim compensation as set out above.

H.6.4 When an educator is injured on duty or contracted an occupational disease the employer must pay the educator's medical expenses in terms of the provisions of the Compensation on Occupational and Injury and Disease Act, The employer may, depending on the circumstances, recover certain expenses in the event where a third party was involved in the accident. Please refer to the guide: "Application Of The Compensation For Occupational Injuries And Diseases Act (COIDA) In The Workplace: A Guide For Government Departments" for further details

**H.7 SPECIAL LEAVE FOR QUARANTINE PURPOSES**

H.7.1 Special leave with full pay may be granted to an educator who has been exposed to a medical condition that requires such person to be placed under quarantine

H.7.2 Application for such leave must be accompanied by a certificate from a medical practitioner stating the period of quarantine as well as the reasons necessitating such leave.

**H.8 MATERNITY LEAVE, PRE-NATAL AND PATERNITY LEAVE**

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- H.8.1 An educator is entitled to 4 consecutive months' maternity leave on full pay to commence at least 14 days prior to the expected date of birth but not later than the actual date of birth in a case of a premature confinement.
- H.8.2 Maternity leave may be extended upon application by one or more of the following:
- H.8.2.1 The granting of sick leave as a result of a medical complication.
- H.8.2.2 The granting of up to 184 consecutive days unpaid leave.
- H.8.2.3 The granting of annual leave, including leave accrued in terms of paragraph H.4.5 if applicable.
- H.8.3 An educator who, during the third semester of her pregnancy, experiences a miscarriage, still birth or termination of the pregnancy will be eligible for six consecutive weeks paid maternity leave, where after paragraph H.8.2.1 will apply in the event of a medical complication.
- H.8.4 Provisions in H.8.3 will also apply to an educator who experiences a miscarriage, still birth or termination of the pregnancy after starting paid maternity leave. The period prior to the miscarriage, stillbirth or termination of pregnancy will be regarded as special leave with full pay.
- H.8.5 For at least six weeks after the birth, no educator may commence with normal official duty unless the attending practitioner certifies that the educator is fit to do so.
- H.8.6 Where it is practically feasible and subject to paragraph H.8.2, an employer may allow an educator to interrupt her maternity leave by letting her return to work temporarily if the baby is hospitalised for a period longer than a month during the maternity leave due to premature birth or illness. These provisions are only applicable to an educator, who chooses to interrupt her maternity leave under these circumstances.
- H.8.7 With effect from 1 January 2013 an eligible educator will be entitled to 8 working days pre-natal leave, per pregnancy, allowing the educator to attend medical examinations by a medical practitioner or midwife, and tests related to the pregnancy.
- H.8.8 An educator can utilise a full day or part of a day for pre-natal leave.
- H.8.9 An educator must submit her application for pre-natal leave in advance, unless unforeseen circumstances prevent her from doing so. An application for pre-natal leave must be supported by reasonable proof that the educator attended a doctor's appointment and/or went for tests related to the pregnancy.
- H.8.10 An educator who has used all her pre-natal leave may, subject to the approval of the HoD or the DG as the case may be, apply to use available annual leave including capped leave and /or unpaid leave.

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- H.8.11 The absence of an educator from work that relates to medical complications during pregnancy will be covered by the normal sick leave. (*Government Gazette No. 38249, dated 27 November 2014*)
- H.8.12 Three (3) working days per calendar year of paternity leave with effect from 20 May 2015, for utilisation if the employee's spouse or life-partner gives birth to a child or adopts a child not older than two (2) years. An employee who has used all his/her paternity leave may, subject to the approval of the Head of Department, apply to:
- H.8.12.1 Use his/her part or all of the five (5) working days family responsibility leave provided for in paragraph H.10.1 below; or
- H.8.12.2 Use available annual leave, including leave accrued in terms of paragraph H.4.5 above; or
- H.8.12.3 Use up to 184 days of unpaid leave.

An application for paternity leave must be supported by reasonable proof. (*PSCBC Resolution No. 2 of 2015*)

**H.9 ADOPTION AND SURROGACY LEAVE**

- H.9.1 An educator, who adopts a child that is younger than two years, qualifies for adoption leave to a maximum of 45 working days where after paragraphs H.8.2.2 and H.8.2.3 will apply.
- H.9.2 Where the spouses or life partners are employed in the Public Service, both partners qualify for adoption leave provided that the combined leave taken does not exceed the 45 working days mentioned above.

**H.10 FAMILY RESPONSIBILITY LEAVE AND SPECIAL LEAVE FOR URGENT PRIVATE AFFAIRS**

- H.10.1 An office-based educator shall be granted five (5) working days leave per annual leave cycle if – (*PSCBC Resolution 1 of 2012*)
- H.10.1.1 The educator's spouse or life partner gives birth; or
- H.10.1.2 The educator's child, spouse or life partner is sick; and
- H.10.2 An office-based educator shall be granted 5 working days leave per annual leave cycle if –
- H.10.2.1 The educator's child, spouse or life partner dies; or
- H.10.2.2 The educator's immediate family member dies.
- H.10.3 The number of leave days taken in terms of paragraphs H.10.1 and H.10.2 shall, in respect of an office-based educator, not exceed ten (10) working days in an annual leave cycle, unless special circumstances warrant further leave at the discretion of the HoD.

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- H.10.4 A school-based educator shall be granted 5 working days leave per annual leave cycle if –
- H.10.4.1 The educator's spouse or life partner gives birth; or
- H.10.4.2 The educator's child, spouse or life partner is sick;
- H.10.5 A school-based educator shall be granted 5 working days leave per annual leave cycle if –
- H.10.5.1 The educator's child, spouse or life partner dies; or
- H.10.5.2 The educator's immediate family member dies.
- H.10.6 An institution-based educator may, during a scheduled working period, be granted special leave to attend to an urgent private matter, the nature of which is such that it warrants such an educator's absence from work.
- H.10.7 The number of leave days taken in terms paragraphs H.10.4, H.10.5 and H.10.6 shall, in respect of an institution-based educator, not exceed fourteen (14) working days in an annual leave cycle, unless special circumstances related to paragraph H.10.4 and H.10.5 warrant further leave at the discretion of the HoD.
- Note: The above does not imply that an educator only has two working days' leave for urgent private affairs. An educator who, for example, does not require leave for a sick child/spouse/life partner or death in the immediate family, may technically utilise all 14 working days for urgent private affairs, provided he/she satisfy the requirements with regard to urgent private affairs.
- An educator who, for example, utilises 2 working days' leave for a sick child and 5 working days' leave for the death of a mother-in-law, will have 7 working days' leave for urgent private affairs or any other related leave.
- H.10.8 An educator who has used all his/her leave in respect of paragraphs H.10.1, H.10.2, H.10.4 and H.10.5 may apply to:
- H.10.8.1 Use available annual leave, including leave accrued in terms of paragraph H.4.3; or
- H.10.8.2 Use up to 184 calendar days of unpaid leave.
- H.10.9 An educator shall be granted five (5) working days per calendar year of family responsibility leave with effect from 20 May 2015 for employees with children who have severe special needs. (*PSCBC Resolution No. 2 of 2015*)
- H.10.9.1 For purposes of paragraph H.10.9, a child with severe special needs is a child who has a mental, emotional or physical disability, certified by a medical practitioner, which requires health and related services of a type or amount beyond that required by children generally.
- H.10.9.2 An application for family responsibility leave shall be supported by reasonable proof to demonstrate the severe special needs of the employee's child.

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H.10.9.3 If an employee has utilised all his/her family responsibility leave, and wishes to extend the leave, he/she may, subject to the approval of the HoD, apply for:

H.10.9.3.1 Available annual leave, including leave accrued in terms of paragraph H.4.5 above; and/or

H.10.9.3.2 Up to 184 calendar days of unpaid leave.

H.10.10 Immediate family member for purposes of paragraph H.10.2.2 and H.10.5.2 means the educator's parent, adoptive parent, parents-in-law, sister- and brother-in-law, grandparent, child, adopted child, stepchild, grandchild or sibling. For the purposes of this provision "child" means the educator's son or daughter, and where applicable son- or daughter-in-law, of any age. The granting of family responsibility leave must be taken with due consideration of the employee's cultural responsibilities.

## **H.11 SPECIAL LEAVE FOR PROFESSIONAL AND PERSONAL DEVELOPMENT AND FOR RELIGIOUS OBSERVANCES**

H.11.1 Special leave with full pay may be granted to an institution-based educator –

H.11.1.1 To engage in activities aimed at his/her professional development.

H.11.1.2 To engage in activities aimed at his/her personal development where such personal development is also in the interest of the employer.

H.11.1.3 For a religious observance.

H.11.2 The total number of leave days granted to an institution-based educator in terms of paragraph H.11.1 may not exceed 3 working days per annual leave cycle.

## **H.12 SPECIAL LEAVE FOR STUDY PURPOSES**

H.12.1 Special leave may be granted to an educator for an approved course of study and for a period approved by the employer, on conditions as approved by the employer, including leave with full or partial pay or without pay.

H.12.2 If special leave for study purposes is granted to an educator in terms of paragraph H.12.1 the employer may call for periodic progress reports in respect of the educator's studies and such educator shall enter into an agreement with the employer in a form approved by the employer in terms of which he/she undertakes to serve the employer immediately after completion of the period of special leave for study purposes for a period (hereinafter referred to as the service period) equal to at least the period for which special leave for study purposes on full pay has been granted to him or her, or for a service period proportional to the person's pay during the period of special leave for study purposes, as the case may be.

## **H.13 SPECIAL LEAVE FOR EXAMINATION PURPOSES**

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H.13.1 An educator may be granted special leave for examination purposes with full pay for each day on which such educator sits as a candidate for an examination approved for this purpose by the employer plus one additional day of special leave for study purposes for each such day of examination which may be taken on the working days immediately prior to the days of examination.

**H.14 SPECIAL LEAVE FOR PARTICIPATING IN SPORTING, CULTURAL AND OTHER EVENTS**

H.14.1 Special leave for a period and on conditions approved by the HoD, in terms of policy of such department, may be granted to an educator who participating in sports, cultural, and other relevant activities. Participation for which leave may be granted may include representation of the country, province or other comparable level as an actual participant, referee, adjudicator, course or group leader, or for participating in or attending a relevant conference, meeting or other event approved for this purpose by the employer.

**H.15 SPECIAL LEAVE IN EXTRAORDINARY CIRCUMSTANCES**

H.15.1 Subject to section 14 of the EEA and notwithstanding any disciplinary measures that may apply, unauthorised absence by an educator shall be regarded as special leave in extraordinary circumstances and shall be without pay unless the employer in a specific case determines otherwise.

H.15.2 If, in the opinion of the employer, circumstances justify it, it may grant or place an educator on special leave in extraordinary circumstances for any reasonable purpose and for any reasonable period, and such leave shall be without pay unless the employer determines otherwise.

**H.16 UNPAID LEAVE**

H.16.1 If an educator has utilised all her or his accrued annual leave, the HoD may grant her or him unpaid leave up to a maximum of 184 consecutive days.

H.16.2 Absences from work due to arrest, imprisonment or appearance in court on a criminal charge that leads to a conviction must be recorded as unpaid leave.

**H.17 UNPAID LEAVE FOR CONTINUITY OF SERVICE**

H.17.1 Unpaid leave for a maximum of 120 consecutive days may be granted to an institution-based educator who was previously employed as an institution-based educator by the same or another education department for the purpose of retaining the continuity of the educator's service.

H.17.2 The unpaid leave shall commence on the day immediately following the date on which the educator last received salary from his/her previous employer and shall expire on the day preceding the date of assumption of duty with the present employer.

H.17.3 The limitation of 120 days referred to in sub-paragraph H.17.1 shall not apply to an educator in cases where the period concerned extends from the day immediately following

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*PERSONNEL ADMINISTRATIVE MEASURES (PAM)*

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the last day of a term to the day immediately preceding the first day of the term after a full term has elapsed.

H.17.4 Where unpaid leave for continuity of service has been granted to an educator, the service of the educator is regarded as continuous for all purposes of determining his/her period of service.

H.18 **LEAVE PROVISIONS FOR EDUCATORS IN A TEMPORARY CAPACITY (FIXED TERM CONTRACT)** (*PSCBC Resolution 1 of 2007, Government Gazette No. 30134, dated 30 July 2007 and the Determination on leave of absence in the public service, July 2009*)

H.18.1 An educator appointed in a temporary capacity (fixed term contract) is eligible to the following types of leave on a pro rata basis linked to the duration of his/her contract:

H.18.1.1 **Annual leave**

An office-based educator appointed in a temporary capacity (fixed term contract) shall at the beginning of his/her contract period be granted annual leave that is proportional to his/her term of employment at a rate of one-twelfth of the annual leave credit applicable to the educator. Annual leave for temporary school based educators is dealt with in paragraph H.4.2.

H.18.1.2 **Normal sick leave**

An educator appointed in a temporary capacity (fixed term contract) shall at the beginning of his/her contract period be granted normal sick leave that is proportional to his/her term of employment at a rate of 1 day's normal sick leave per month of service.

H.18.1.3 **Maternity, pre-natal and paternity leave**

H.18.1.3.1 An educator appointed in a temporary capacity (fixed term contract) shall be granted paid maternity leave that is proportional to her term of contract at a rate of 10 calendar days maternity leave with full pay calculated at each month of her term of contract to a maximum of 4 months, where after maternity leave without pay shall be granted. The total period granted in respect of maternity leave shall not exceed four consecutive months.

H.18.1.3.2 **Pre-natal leave (effective from 1 January 2013)**

An educator appointed in a temporary capacity (fixed term contract) shall qualify for pre-natal leave at a rate of 1 working day paid leave for each calendar month of her term of contract to a maximum of 8 working days.

H.18.1.3.3 **Paternity leave**

With effect from 20 May 2015 an educator appointed in a temporary capacity (fixed term contract) whose spouse or life partner gives birth to a child or adopts a child not older than 2 (two) years, shall qualify for paternity leave at a rate of 1 working day paid leave for each calendar month of his/her term of contract to a maximum of 3 working days.

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**H.18.1.4 Adoption leave**

A temporary educator who adopts a child that is younger than two years, shall qualify for adoption leave at a rate of 4 days paid leave for each month to a maximum of 45 working days

**H.18.1.5 Other provisions**

The terms and conditions attached to the granting of the above types of leave, as well as the provisions contained in: paragraph(s) H.4.4, H.4.6, H.5.3, H.5.4 (where applicable), H.5.2.5, H.5.2.6, H.6, H.11 and H.12 (where applicable) apply mutatis mutandis to an educator appointed in a temporary capacity (fixed term contract).



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Annexure H.1

APPLICATION FOR LEAVE OF ABSENCE: SCHOOL BASED EDUCATORS (Government Gazette No 38249, 27 November 2014)

Surname:								Initials:			
PERSAL Number:								Contract Educator		Yes	No
Address during leave:		Substitute Educator		Yes	No						
		Department									
		District									
TEL/CELL:								School			
								Pay Point			
<b>SECTION A</b>											
Type of Leave Applied for as Working days				Start Date	End Date	Number of Working days					
Capped Leave (only applicable to educators with capped leave)											
Normal Sick Leave (this application form must not be used for PILIR applications)											
Leave For Occupational Injuries and Diseases											
Adoption and Surrogacy Leave											
Family Responsibility Leave (Provide Evidence)											
Urgent Private Matters (for interpretation, refer to the section in the PAM)											
Pre-Natal Leave (provide evidence)											
<b>SECTION B</b>											
Specify Type Special Leave (the number of days are prescribed in the Leave Measures)											
Type of Leave Taken as Calendar Days/Months				Start Date	End Date	Number of Calendar Days					
Unpaid Leave (Attach Motivation)											
Maternity Leave (Attach Medical Certificate)						No. Of Calendar Months					
<b>SECTION C: For Periods covering parts of the day or fractions</b>											
Type of Leave Applied for as Working Days and Calendar Days (unpaid leave)				Date	Start Time	End Time	No. of Hours/Minutes				
Capped Leave (only applicable to educators with capped leave)							h	m			
Normal Sick Leave							h	m			
Family Responsibility Leave (Provide Evidence)							h	m			
Special Leave							h	m			
Urgent Private Matters							h	m			
Pre-Natal Leave											
Paternity Leave											
<i>I hereby certify that the information provided is correct.</i>											
<b>EMPLOYEE SIGNATURE</b>						<b>DATE:</b>					
<b>Recommendation By Supervisor/Manager (Mark with X)</b>											
Recommended				Not Recommended							
REMARKS (If not recommended please state the reasons & the dates in the case of rescheduling):											
_____											
_____											
<b>MANAGER/SUPERVISOR'S SIGNATURE</b>						<b>DATE</b>					
<b>Approval by Head of Department (Mark with X)</b>											
Approved With Full Pay				Approved Without Pay				Not Approved			
REMARKS (If approved with a change in condition of payment or not approved, please provide motivation):											
_____											
<b>SIGNATURE OF HOD OR DESIGNEE</b>						<b>DATE</b>					

**Annexure H.2****AGREEMENT: SPECIAL LEAVE FOR STUDY PURPOSES**

1 I, \_\_\_\_\_ (full name), hereby undertake towards the head of the education department of

\_\_\_\_\_ (name of education department)

immediately after expiry of the period of special leave for study purposes granted to me in terms of general education policy for the period

\_\_\_\_\_ to \_\_\_\_\_

to serve in an education department (hereinafter referred to as my service obligation) for a continuous period of \_\_\_\_\_ days.

2. I hereby further undertake, during this leave, periodically and as determined by the head of my education department to obtain progress reports in respect of my study courses from the institution at which I am studying and to submit such reports to the head of my education department, and I understand that he retains the right on the basis of such progress reports to instruct me to resume service immediately and to renounce the privileges of this leave granted to me and to convert such leave into vacation leave or special leave in extraordinary circumstances and in the latter case to recover any excess payment from me which might have occurred as a result thereof, and to transfer such payment to the education department with which this contract has been concluded.
3. I hereby declare that I understand that authorised leave with full or partial pay normally counts as service towards the fulfilment of my service obligation and that, if leave without pay is granted to me before my service obligation is fulfilled, my service obligation will be extended by the number of days equal to the periods for which leave without pay was granted to me.
4. I hereby further undertake, if in any manner whatsoever, except in the event of my death, or as a result of my permanent disability not caused by me, fail to fulfil this agreement fully, irrespective of whether such failure is the result of discharge owing to misconduct, to immediately repay on written request the service bonus and salary which I received during the above-mentioned period of special leave for study purposes on a pro rata basis together with the interest thereon at the interest rate as prescribed in the Financial Hand Book of the Department of Finance, calculated from the date of breach of contract, to the education department with which this contract has been concluded.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signature of Educator: \_\_\_\_\_

**WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

## CHAPTER I

### GENERAL PROVISIONS

#### I.1 EXEMPTION FROM PAYMENT FOR INSTRUCTIONS BY EDUCATIONAL INSTITUTIONS

An educator who, in his/her capacity as a student, must pay for instruction, or any other service resulting from such instruction, which he/she follows in accordance with one or other instructional programme approved by the department of education and which is offered by a department of education responsible for education or an educational institution instituted, registered or administered in terms of a law, may on a basis approved by the employer, be compensated partly or in full in a direct or indirect manner for such expenditure. (*Regulation 21 of the Regulations regarding the terms and conditions of employment of educators*)

#### I.2 FULL-TIME STUDY COURSE

I.2.1 A department of education may, on the terms and conditions he may determine, authorise and educator to follow a full-time study course approved by the department of education and while the educator follows such course he/she shall be deemed to be on duty in an educator's post. (*Regulation 29 of the Regulations regarding the terms and conditions of employment of educators*)

#### I.3 OFFICIAL CHANNELS OF COMMUNICATION

I.3.1 A request or communication from an educator in connection with a matter falling within the scope of the employer's power or duties must be directed to the employer via the head of the institution or the office.

I.3.2 Notwithstanding paragraph I.1.3.1, matters regarding the appointment, termination of service and leave privileges and enquiries about the remuneration of an educator must be referred to the head of education by the principal of the school concerned, subject to provisions of the LRA. (*Regulation 25 of the Regulations regarding the terms and conditions of employment of educators*)

#### I.4 REPLYING TO QUESTIONS

I.4.1 An educator must reply explicitly to a question concerning his/her duties and powers put to him by a person who is competent to put such question; provided that an educator shall not be obliged to furnish a reply which may incriminate him/her. (*Regulation 26 of the Regulations regarding the terms and conditions of employment of educators*)

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*PERSONNEL ADMINISTRATIVE MEASURES (PAM)*

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**I.5       LAWFUL INSTRUCTIONS**

I.5.1       Subject to the provisions of paragraph I.1.5.2, an educator must carry out an lawful instruction given to him/her, in writing or verbally, by an authorized person.

I.5.2       An educator may, at the time of a verbal instruction, request that such an instruction be confirmed in writing and he/she may submit any complaint he/she may have in connection herewith to the employer for a decision. (*Regulation 27 of the Regulations regarding the terms and conditions of employment of educators*)

**I.6       RESIDENTIAL ADDRESSES AND TELEPHONE NUMBERS**

I.6.1       An educator must notify the department of education of his/her residential address and telephone number, if any, and of any change thereof and the department of education must keep a record of it. (*Regulation 28 of the Regulations regarding the terms and conditions of employment of educators*)

**I.7       PROOF OF MARRIAGE OR CHANGE OF MARITAL STATUS**

I.7.1       An educator must, within 30 days after getting married or after his/her marital status has changed, submit a certified copy of the marriage certificate, decree or divorce or death certificate, as the case may be, to the department of education: provided that the department may in his/her discretion demand the submission of the original certificate. (*Regulation 30 of the Regulations regarding the terms and conditions of employment of educators*)

**I.8       REPORTS ON EDUCATORS AND ADVERSE REMARKS**

I.8.1       A report, on a form determined by the Minister (in the case of the Department of Basic Education) and the MEC (in the case of a provincial department of education), must be drawn up and submitted to the department of education by the head of the relevant institution or office in respect of any educator as often as the department of education may require.

I.8.2       Any adverse remark contained in a report referred to in paragraph I.1.8.1 must be brought to the notice of the educator concerned in writing and in its full context by the person who compiled the report.

I.8.3       The educator must sign the report and return it to the compiler together with such representations, in writing, as he/she may desire to submit.

I.8.4       The above provisions will also apply to adverse remarks made in respect of an educator in a written communication, except that such remarks must be brought to the educator's attention by the head of the relevant institution or office.

I.8.5       If it comes to the attention of the department of education that an adverse remark is unjustified, the department may at any time, if he/she deems fit, declare any adverse remark in connection with an educator null and void and in such a case the educator must be

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notified in writing of the nullification. (*Regulation 31 of the Regulations regarding the terms and conditions of employment of educators*)





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