



Circular Letter 0062/2017

**To: The Managerial Authorities of Recognised Primary, Secondary, Community and Comprehensive Schools
and
The Chief Executives of Education and Training Boards**

**SCHEME FOR LEAVE OF ABSENCE FOLLOWING ASSAULT
FOR
SPECIAL NEEDS ASSISTANTS
IN
RECOGNISED PRIMARY AND POST-PRIMARY SCHOOLS**

The Minister for Education and Skills directs you to implement the regulations and procedures regarding the Scheme for Leave of Absence following an Assault for special needs assistants (SNAs) employed in an approved post funded by monies provided by the Oireachtas.

The regulations and procedures are to be implemented by each employer from 1st September 2017 and all SNAs must adhere to the terms of the attached Scheme for Leave of Absence following an Assault.

This circular supersedes all previous circulars, memoranda, rules and regulations in relation to Leave of Absence following an Assault for SNAs in recognised primary and post-primary schools. Please ensure that copies of this circular are provided to all members of the Board of Management/Education and Training Boards and its contents are brought to the attention of all SNAs in your employment including those on leave of absence.

This Circular can be accessed on the Department's website under www.education.ie Home – Education Staff – Breaks/Leave – Leave of Absence following Assault.

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Teacher/SNA Terms & Conditions
01 September 2017

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01 September 2017

Contents

Definitions.....	3
1. Introduction.....	4
2. School Policy.....	4
3. Entitlement to Leave of Absence following Assault	5
4. Application process.....	6
5. Occupational Health Service (OHS) referral.....	6
6. Recording of Leave of Absence following Assault.....	6
7. Status while on leave.....	7
8. Correspondence address.....	7
9. Compliance.....	7
10. Further information.....	7
11. Application Form for Leave of Absence following Assault	8

SCHEME FOR LEAVE OF ABSENCE FOLLOWING ASSAULT

Definitions

For the purposes of the scheme the following terms have the meanings assigned to them here unless the context indicates otherwise:

Assault – means physical contact from a third party causing physical injury to a special needs assistant in the course of the special needs assistant’s duties and during approved school activities.

Employer - means an Education and Training Board (ETB) for vocational schools/community colleges, community national schools and a Board of Management/Manager in the case of primary (excluding community national schools), voluntary secondary, community and comprehensive schools. The Education Training Board or Board of Management/Manager may delegate as appropriate responsibility for matters set out in this circular.

On Line Claims System (OLCS) – means the system for recording absences and claiming substitution currently operating in primary, voluntary secondary, community and comprehensive schools.

The Department – means The Department of Education and Skills (DES).

1. Introduction

- 1.1 Leave of absence under this scheme may be granted to an SNA who is unable to perform his/her duties due to a physical injury following an assault in the course of the SNA's duties and during approved school activities.
- 1.2 The incident giving rise to an application for leave under this scheme must not have been due to any negligence or any act or omission on the part of the SNA and all due procedures and protocols in regard to personal safety must have been adhered to.
- 1.3 Granting of leave under this scheme is not an admission of liability on the part of the employer and any such leave is granted on a strictly without prejudice basis.
- 1.4 The Scheme for Leave of Absence following Assault will operate on a pilot basis for 2 school years commencing the school year 2017/2018.
- 1.5 A substitute SNA may be employed by the Board of Management/ETB to cover an SNA who has been granted Leave of Absence following Assault and such substitute SNA will be paid by the Department/ETB.

2. School Policy

- 2.1 The Health and Safety Authority (HSA) is the national statutory body responsible for regulating health and safety in the workplace. The employer has a duty under Section 8 of the Safety, Health and Welfare at Work Act 2005 to "ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees". Employers should familiarise themselves with their responsibilities and obligations under the Acts and the various Regulations, and in particular, the *Managing Safety and Health in Schools Guidelines* accessible on the HSA website at www.hsa.ie.
- 2.2 Boards of Management should have in place a clearly defined policy/ Code of Behaviour/Safety Statement which includes procedures to be implemented in the event of an assault on an employee. These procedures should include;
 - (i) seeking medical assistance, where necessary.
 - (ii) immediate reporting of incidents to School Management.
 - (iii) recording of incidents in an Incident Report Book.
 - (iv) reporting of the incident to the Health and Safety Authority.
 - (v) reporting to the Gardaí, where appropriate.
 - (vi) Ensuring that all appropriate safeguards have been put in place to protect persons at risk and to prevent, in so far as is practicable, the occurrence of assault.

3. Entitlement to Leave of Absence following Assault

3.1 Only absences medically certified as a physical injury qualify for leave under this scheme.

To be acceptable, a medical certificate must

- be signed by a duly qualified medical practitioner registered with the Irish/UK Medical Council/Dental Council of Ireland, and
- normally cover a period of no more than one week. However, certification for periods of up to one month may be permitted at the discretion of the employer, and
- state fitness to work or otherwise

3.2 The maximum leave available under the Scheme for Leave of Absence following Assault is 3 months (92 days) at full pay in a rolling 4 year period. In exceptional cases, such as where a significant period of hospitalisation is required or in situations of a second or subsequent incident of assault, the leave may be extended for a further period not exceeding 3 months (91 days) at full pay, subject to an overall limit of 6 months (183 days) at full pay in a rolling 4 year period. Any subsequent absence will be dealt under the Sick Leave scheme.

3.3 Leave of Absence following Assault includes weekends, school closures and days on which an SNA is not timetabled for attendance, occurring within the period of absence.

3.4 When calculating an SNA's entitlement, any Assault Leave/Leave of Absence following Assault granted in the previous four years from the current absence will be taken into account in determining access to leave under this scheme.

3.5 Leave of Absence following Assault ends on:

- the ceasing of the certification of the physical injury by a duly qualified medical practitioner; or
- the maximum leave limits available under this scheme being exhausted; or
- certification of fitness to return to duties.

3.6 An SNA who has exhausted the maximum period of paid leave under the Scheme for Leave of Absence following Assault and who is still medically unfit to resume duty may avail of Sick Leave under the Sick Leave scheme, subject to the normal rules of that scheme.

3.7 Fixed term/fixed purpose contract of employment: The SNA's entitlement to Leave of Absence following Assault shall cease on the expiry of the contract and that contract not having been renewed.

4. Application process

- 4.1 In order for an absence to be recorded as Leave of Absence following Assault, the Application Form (attached at Appendix A) must be completed by the SNA concerned and the employer (or, in the case of ETB schools, the Principal) and forwarded by the employer to the Department/ETB within a week of the incident occurring. Where in exceptional cases an SNA is unable to complete their part of the application within a week of the incident due to physical incapacity, this period may be extended by the employer – applications must be forwarded to the Department/ETB within a reasonable period in this event.
- 4.2 The Application Form must set out details of the incident and be accompanied by copies of the required reporting documentation.

5. Occupational Health Service (OHS) referral

- 5.1 Absences recorded under this scheme will be combined with previous Sick Leave absences for the purposes of non-discretionary referral to the OHS under the '28 day rule' as provided for under the SNAs' Sick Leave Scheme.
- 5.2 The OHS Standard Operating Procedures will apply, including in relation to referral and fitness to return to work.

6. Recording of Leave of Absence following Assault

6.1.0 DES paid SNAs

- 6.1.1 For the duration of the pilot scheme, an SNA's initial absence on Leave of Absence following Assault will be entered on the OLCS by the Department, upon receipt of a fully completed application form for such leave from the employer. Any continued absence under this scheme must be entered on the OLCS by the employer upon receipt of an acceptable medical certificate and subject to a maximum period of 3 months (92 days).
- 6.1.2 In exceptional circumstances, where a further extension is required, an application must be forwarded to the Department by the employer setting out the reasons for such an extension. This extended leave is entered on the OLCS by the Department. The SNA's absence may then be extended by the employer for a further period, subject to receipt of the appropriate medical certification and subject to a maximum of 91 days. Leave of Absence following Assault is subject to an overall maximum period of 6 months (183 days) in a rolling 4 year period.

6.2.0 ETB paid SNAs

- 6.2.1 For the duration of the pilot scheme, Leave of Absence following Assault will be initially entered on the ETB system by the School/HR Department on receipt of the fully completed Application Form. Any continued absence under this scheme

must be entered on the ETB system by the employer on receipt of acceptable medical certification and subject to a maximum period of 3 months (92 days).

- 6.2.2 In exceptional circumstances, where a further extension is required, an application must be forwarded to the Chief Executive by the school setting out the reasons for such an extension. This extended leave is entered on the ETB system by the School/HR Department. The SNA's absence may then be extended by the employer for a further period, subject to receipt of the appropriate medical certification and subject to a maximum of 91 days. Leave of Absence following Assault is subject to an overall maximum period of 6 months (183 days) in a rolling 4 year period.

7. Status while on leave

- 7.1 The SNA's Sick Leave record will not be affected by any absences recorded as Leave of Absence following Assault.
- 7.2 Absences under this scheme are fully reckonable for all purposes including seniority, determination of panel rights etc.

8. Correspondence Address

- 8.1 The employer will address all necessary correspondence to the SNA at the address last notified by the special needs assistant and no fault shall lie with the employer in the event that the special needs assistant does not receive such correspondence.

9. Compliance

- 9.1 All SNAs/employers must adhere to the regulations and procedures set out in this circular. Failure to abide with the regulations and procedures will be dealt with under the agreed disciplinary procedures and may lead to the cessation of salary in the case of SNAs and/or withdrawal of substitute cover in the case of schools.
- 9.2 All documentation relating to Leave of Absence following Assault must be retained by the employer with the relevant personnel records for 10 years. These records may be selected for inspection by nominated Department officials. All records should correspond with the data input on the OLCS/appropriate ETB System.

10. Further Information

- 10.1 In accordance with the introductory paragraph, the regulations in this circular are to be implemented by the employer. All queries should initially be brought to the attention of the employer who may wish to consult with their representative organisation, who may further wish to consult with the Department at the following email address: teachersna@education.gov.ie

Appendix A

Application Form for Leave of Absence following Assault

Completed forms, with attachments, should be submitted to Department of Education and Skills, Teacher/SNA Terms and Conditions Section, Cornamaddy, Athlone, Co Westmeath; or to the relevant Education and Training Board as appropriate.
(A copy of the completed form should be retained in the special needs assistant's personnel file).

Name of SNA: _____

PPSN: _____

School Name: _____ Roll No.: _____

Date and Time of incident: _____

Place where incident occurred: _____

Brief summary of incident:

I, the undersigned, declare that the above information is true, accurate and complete; that I have read Circular 0062/2017, and that the leave of absence applied for is in accordance with the terms of that circular.

Signature: _____
(SNA)

Date: _____

To be completed and signed by the Employer

Period of leave of Absence following Assault: From _____ to _____.

I confirm that (*please tick as appropriate*):

- I have received medical certification in relation to the period of absence above in accordance with the scheme as set out in Circular 0062/2017.
- The incident has been recorded in the Incident Report Book.
(*Copy of record to be attached*)
- The incident has been reported to the Health and Safety Authority.
(*Copies of relevant correspondence to be attached*)
- The incident has been reported, where appropriate, to An Garda Síochána.
(*Copies of relevant correspondence to be attached*), **OR**
- The incident was considered inappropriate to be reported to An Garda Síochána,.
- All appropriate safeguards have been put in place to protect persons at risk, and to prevent, in so far as is practicable, the re-occurrence of a similar incident.

I, the undersigned, declare that I have read the circular, that the information recorded in this form is true, accurate and complete and that the leave of absence applied for is in accordance with the terms of the circular.

Signature: _____ **Date:** _____
(*Principal/Chairperson, on behalf of Employer*)

Full name and address of school: _____

Email address: _____ Telephone number: _____

Data Protection Notice

The Department of Education and Skills will treat all personal data you provide on this form as confidential and will use it solely for the purpose intended. The information will only be disclosed as permitted by law or for the purposes listed in the Departments registration with the Data Protection Commissioner - REF 10764/A. If the information you have provided is to be used for purposes other than outlined in the Department's registration with the DPC your permission will be sought here.