

**THE NEW YORK CITY DEPARTMENT OF EDUCATION
DIVISION OF HUMAN RESOURCES
CENTER FOR RECRUITMENT AND PROFESSIONAL DEVELOPMENT
65 COURT STREET
BROOKLYN, NEW YORK 11201**

PERSONNEL MEMORANDUM NO. 4, 2002-2003

October 24, 2002

TO: Presidents of Community School Boards, Community Superintendents, High School Superintendents, Chief Executives, Executive Directors, Principals of All Day Schools, Personnel Directors

FROM: Joyce R. Coppin, Chief Executive

SUBJECT: Policy and Procedures on Line of Duty Injuries for Pedagogical Employees

This circular consolidates and updates the Department of Education's policies and procedures on line of duty injuries for pedagogical employees previously detailed in Special Circular No. 32, 1989-90; Personnel Memorandum No. 19, 1986-87 and Personnel Memorandum No. 39, 1989-90.

I. - APPLICATION OF POLICY

Approved leave for injury in the line of duty is granted with pay and without charge to sick leave. Chancellor's [Regulation C-603](#), "Responsibilities of Absent Employees," should be read in conjunction with this policy.

CONDITIONS

Injury in the line of duty will be granted provided the following has occurred: 1) the principal, principal's designee or responsible supervisor has been notified of the accident or incident; 2) the injured employee has submitted an application for injury in the line of duty leave (OP198) in accordance with Section II of this circular; 3) the superintendent or designee has determined that the causative accident or injury occurred in the line of duty; 4) all medical documentation requested by the Medical Bureau has been received; and 5) the Medical Bureau has determined that unfitness for duty was the direct result of the causative accident or incident.

APPROVAL BY SUPERINTENDENT FOR REQUESTS FOR INJURY IN THE LINE OF DUTY FOR PERIODS OF TEN DAYS OR LESS

Requests for leaves for injury in the line of duty that are for ten days or less (excluding the day of the accident/incident) may be approved by the superintendent upon the receipt of the documentation set forth above, including a note signed by a physician advising the employee to remain out of work for a proscribed period of time, and providing all other conditions set forth in this circular have been met (see Section II and Section III). The superintendent must also be satisfied that the criteria set forth in section III of this circular has been met. The ten days that can be approved by the superintendent do not have to be consecutive days; they can be any ten days during a school year.

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Any request for injury in the line of duty that is for a period of more than ten days or that the superintendent does not approve should be forwarded to the Medical Bureau for review and a determination in accord with existing procedures.

PER SESSION ACTIVITY, PER DIEM SUBSTITUTES AND OTHER SUBSTITUTES

During the period of time that a leave is granted for injury in the line of duty, a pedagogical employee shall be granted leave for the same period from a per session activity, provided the employee has reported at least once to that per session activity. (Compensation for the per session activity is limited to the length of that per session activity.) If the employee is granted injury in the line of duty leave for any injury which occurred during the performance of per session duties, the leave extends to his/her regular employment as well.

In the case of occasional per diem (day-to-day) substitute employees, leave for injury in the line of duty may extend up to the day for which the occasional per diem substitute was notified he or she would be employed.

In the case of other substitutes (i.e. other than occasional, full term) leave for injury in the line of duty may extend to the end of the school year following the one in which the employee was injured.

EFFECT ON SALARY CREDIT, PENSION CREDIT AND PROBATIONARY PERIOD

During the period of injury in the line of duty leave, a pedagogical employee receives salary credit and if regularly appointed, pension credit. There is no reduction, by reason of such leave, of the total probationary period, which an employee may be required to serve. Similarly, retention rights, if any, are unaffected by injury in the line of duty leave.

II. - RESPONSIBILITY FOR REPORTING

Any accident/incident which may result in a claim being filed for injury in the line of duty must be reported.

RESPONSIBILITY OF EMPLOYEE

Employees should report any such accident/incident to the principal, principal's designee or responsible supervisor before the close of business on the day of the incident/accident, but no later than twenty-four hours after the accident/incident has occurred, unless reasonable grounds exist for failure to report within these time limits. Temporary conditions, such as ice or water, must be reported immediately so that conditions can be verified and corrected. If the school or office is closed at the time, the report must be made on the next day such school or office is open. When injury is involved, a Comprehensive Accident Report must be prepared and signed by the employee. The Comprehensive Accident Report which includes information on the accident/incident, a description by the injured employee and statements by witnesses should be as detailed as possible so that the specific circumstances can be reviewed. The injured employee must also submit an Application for Excuse of Absence (OP 198) when claiming absences as a result of the injury.

If the injured employee anticipates that the absence will exceed ten working days, he/she should contact the Medical Bureau at 718-935-2733 to schedule an appointment for an examination.

ROLE OF THE PRINCIPAL

The principal, principal's designee or responsible supervisor must receive a Comprehensive Accident Report for every accident/incident involving an injury which occurs on school premises or during school hours. One copy of the Comprehensive Accident Report must be submitted to the responsible superintendent within twenty-four hours of the principal being notified. In all cases, the principal, principal's designee or responsible supervisor shall conduct a thorough investigation and shall present as complete a record as possible to the responsible superintendent.

The principal's signature must be entered on the Comprehensive Accident Report Form. The signature of the principal, principal's designee or responsible supervisor on this report will serve to indicate that he/she has reviewed and has either agreed or disagreed with the statements contained therein. If the appropriate supervisor does not acknowledge the information which is being presented, the report submitted to the superintendent should be accompanied by an explanation of the points of disagreement. Upon the determination by the superintendent (as described in the section below) and where the accident/incident results in a claim for absence without charge to sick leave, the Comprehensive Accident Report, the OP 198 (signed by the principal/supervisor) and other relevant material must be forwarded by the school to the Medical Bureau, 65 Court Street, Room 201, Brooklyn, N.Y. 11201.

It should be noted that the final approval of a leave for injury in the line of duty is subject to the determination of the Medical Bureau, except for requests of less than ten days approved by the superintendent, as set forth in section I above.

ROLE OF THE SUPERINTENDENT

After receiving a Comprehensive Accident Report from a school or office, the superintendent or designee must review and sign the report within five school days unless reasonable grounds exist for failure to report within this time limit. He/she must assess each claim administratively based on the facts of the case, including any attached documentation or letters and determine whether the causative accident or incident occurred in the line of duty in accordance with the criteria outlined in this circular. (See section III.) The superintendent must enter "Approved" or "Disapproved" in the designated area and sign the Comprehensive Accident Report.

If an alleged accident/incident is not reported within the required time, the Comprehensive Accident Report and the OP 198 should be checked off as "Disapproved" for the reason of untimely reporting. Please refer to section IV of this circular for additional important information concerning referrals to the Medical Bureau.

It should be noted that a superintendent must make a determination regarding all Comprehensive Accident Reports, regardless of whether an absence has occurred or medical attention has been received.

After the superintendent's determination has been entered, the original Comprehensive Accident Report should be returned to the school or office with a copy retained in the superintendent's office.

III. - CRITERIA FOR DETERMINATION OF LINE OF DUTY INJURY STATUS

The superintendent or office head having jurisdiction shall review the facts of each reported accident or incident and determine whether it may be considered as having occurred in the line of duty based on the facts of each case and the following criteria. The Chancellor shall have sole discretion to grant leave for injury in the line of duty in exceptional circumstances to injured employees who do not satisfy all the requirements of this policy.

CAUSAL FACTORS

An accident or incident is the natural, direct and immediate cause of an injury or disability, and could not have been foreseen or avoided with ordinary care by the injured employee. An employee's statement that an injury was the result of an untoward incident or extraordinary circumstance, defective condition, or that it occurred in the exercise of ordinary care, shall be considered conclusive unless the contrary is proven. The proof must be objective and credible evidence unless the employer can establish that the employee has a documented pattern of abuse of injury in the line of duty claims or other substantial evidence which is sufficient to establish an employee's lack of credibility as to this particular claim.

DEFINITIONS OF WHEN AND WHERE AN EMPLOYEE IS ON DUTY

The causative accident or incident must have occurred while the employee is on duty. An employee is on duty when one or more of the following requirements are met:

1. The employee has officially reported to work.
2. The employee is on school property during lunch period or immediately before or after officially reporting to or from work. (School property is considered to be the school itself, the surrounding area including the playground fields and/or play areas, the sidewalk outside the school, and the school parking lot.)
3. The employee is not on school property but has approval to work at another site or at an out-of-school assignment such as coaching or field trips.
4. The employee is traveling outside the school pursuant to explicit instructions from a supervisor (e.g. transporting payroll material, or is directly en route to or from a meeting or conference.)
5. The employee has an assignment, which requires travel and is injured while performing duties connected with this assignment (e.g. attendance teacher or teacher of the homebound.)

PRE-EXISTING CONDITION

An illness, injury or disability, which is shown to have existed prior to an accident/incident claim, is a pre-existing condition and will not be considered an injury in the line of duty. However, a pre-existing condition, which is aggravated by a new injury, may be considered an injury in the line of duty.

EMPLOYEE NEGLIGENCE

An injury resulting from the employee's own negligence or recklessness is not an injury in the line of duty.

ALTERCATIONS BETWEEN EMPLOYEES

An injury resulting from an altercation between employees does not qualify as an injury in the line of duty, unless there is an agency, administrative, arbitration or judicial determination that the injured employee was not at fault or that another employee was at fault. Injuries suffered as a result of a physical attack by someone other than an employee is compensable if the criteria for injury in the line of duty status are met, unless there is undue provocation on the part of the employee.

RE-OCCURRENCE OF AN INJURY

If an employee is granted injury in the line of duty leave, and returns from that leave for a substantial period of time, leave will not again be granted based upon the same injury unless the Medical Bureau determines the claim is meritorious. In making its decision whether to grant the subsequent leave the Medical Bureau will consider the following: the length of return to duty, the type of duties, the original injury involved and the nature of the subsequent claim.

IV. - PROMPT REFERRAL FOR MEDICAL EXAMINATION

An absence as a result of an alleged line of duty injury which exceeds ten days cannot be approved solely by the Superintendent, and must be referred promptly to the Medical Bureau. A delay in submitting an Application for Excuse of Absence form (OP198), with the accident report should not impede the referral of an employee to the Medical Bureau for an examination as soon as possible, particularly where:

1. The principal or unit head believes an expeditious medical examination is warranted by the circumstances.
2. There are claims of injuries to head, eyes, back, shoulder, elbow, knee or groin.
3. The possibility of exposure to toxic fumes for all employees, particularly for asthmatics or persons with cardiac conditions.
4. There are residual effects which continue beyond ten school days, even though no absence has occurred.
5. Absence as a result of an injury which exceeds ten days and therefore cannot be solely approved by the superintendent, and should result in a prompt referral to the Medical Bureau.

V. - SET OFF OR RECOUPMENT OF WAGES (FORM OP 200)

The Department of Education reserves the right to recoup monies against payments received by the employee resulting from claims against third parties. Employees should be alerted to the necessity of completing and filing an Assignment Form (OP200) at the time that claim of line of duty injury is being presented.

It should be made clear that no Application For Excuse Of Absence (OP198) will be processed, nor will any payment be approved for the period in question unless this form

has been submitted. In executing the Assignment Form, the employee is giving the Department of Education the legal right to collect any monies received by the employee as a result of a judgment or settlement. The form must be signed by the employee claiming line of duty accident and notarized.

Form OP 198 should not be submitted unless Part 1, Line C has been checked, thereby attesting that an Incident Report and Assignment Form (OP200) have been filed prior to this application and are maintained in the files at the school or office.

It is the responsibility of the school or office to ensure that this form is properly completed and on file at the work site. Please note: This form should be retained on file in the school or office and not be forwarded to the Medical Bureau.

VI. - REMUNERATIVE ACTIVITY, WITHOUT PERMISSION, DURING INJURY IN THE LINE OF DUTY LEAVE IS PROHIBITED

Remunerative employment during leave for injury in the line of duty is prohibited without the written approval of the Division of Human Resources. Should an injured employee violate this prohibition by engaging, without permission, in remunerative activity, the Division of Human Resources may terminate the leave as of the date on which the violation began. Such termination of leave shall not preclude any other appropriate disciplinary action by the responsible superintendent or the Chief Executive.

A written request, which includes a detailed description of job duties, must be submitted to the Medical Bureau in order to receive an exemption. Factors to be considered in determining whether to grant approval for remunerative employment during leave for injury in the line of duty shall include: the type of work involved, whether the employee was engaged in the activity prior to going on leave for injury in the line of duty and the employee's physical condition.

VII. - SERVICE REPORTING PRIOR TO APPROVED LEAVE FOR INJURY IN THE LINE OF DUTY

Pending Medical Bureau determination on a request for line of duty status and the duration that may be granted, absence claimed as injury in the line of duty is to be treated and reported as a claim for ordinary personal illness. Cumulative Absence Reserve (CAR) days may be used to the extent permitted by the number of days in the employee's absence reserve or sick bank. If necessary, and to the extent requested by an injured regularly appointed employee, subject to Medical Bureau approval, such absence with pay may be covered by borrowed absence reserve and/or up to one calendar month of absence may be excused without pay for personal illness (i.e. grace period.)

Upon expiration of such calendar month (grace period), the employee is required to apply for and accept a leave of absence without pay for restoration of health, subject to Medical Bureau approval, or to apply for disability retirement as appropriate.

VIII. - REIMBURSEMENT FOR UNINSURED LINE OF DUTY INJURY MEDICAL EXPENSES

Employees, who have been granted line of duty status by the Medical Bureau, may be reimbursed for out-of-pocket medical expenses, which are a result of the approved injury in the line of duty. Only expenses that are not covered by other payments or insurance will be considered. The current \$750.00 limit set forth in the collective bargaining agreement will be waived when an employee is injured during an unprovoked assault by a student, parent or intruder on school premises or off school premises provided the employee was performing duties in the course of his or her employment. This waiver will be granted by the Chancellor or his designee and is not subject to the grievance procedure. The Medical Bureau will review such cases to determine the amount to be approved. Claim forms for reimbursement may be obtained from the general office in each school or by writing to the Medical Bureau, Claims Unit, 65 Court Street, Room 9, Brooklyn, New York 11201.

IX. - RESPONSIBILITY FOR RETENTION OF RECORDS OF ACCIDENTS

Each school or organizational center is responsible for maintaining a complete case file of employees claiming injury in the line of duty.

In addition, each school or organizational center is also responsible for maintaining a complete case file on each submitted injury in the line of duty claim.

For employees injured during a per session or other paid activities, the case file will be maintained in the personnel files of the school or organizational center in which the employee is primarily employed. If an employee is injured in a district or office other than that of the primary employment, both the school and organizational center will maintain case files. In such cases, the school, district or office where the individual is primarily employed will furnish a photocopy of any necessary documents to the responsibility center having jurisdiction over the secondary employment.

X. - LEAVING THE NEW YORK CITY AREA, WITHOUT PERMISSION, DURING LINE OF DUTY LEAVE IS PROHIBITED

Without the written approval of the Division of Human Resources, leaving the New York City area during injury in the line of duty leave for any purpose including treatment affecting their mental or physical health is prohibited. Should an injured employee violate this prohibition, the Division of Human Resources may terminate the leave as of the date on which the violation began.

A written request, including supporting medical documentation must be submitted to the Medical Bureau in order to receive an exemption.

XI. - INQUIRIES AND ASSISTANCE

Any inquires concerning this memorandum may be addressed to:

**MEDICAL BUREAU
65 Court Street, Room 201
Brooklyn, NY 11201**

**Telephone No. (718) 935-2729
Fax No. (718) 935-2641**