



Section 51A Compassionate Transfer Guideline

Approved by: *Executive Director, Human Resources*

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Brief Description:

This Guideline provides information on the grounds for determining whether exceptional and compelling circumstances exist when considering a Section 51A Transfer on Compassionate Grounds made by a Teacher pursuant to the *Staffing Procedure for the Teaching Service in NSW Public Schools*.

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1. Introduction

This Guideline relates to the Secretary's powers under the *Teaching Service Act 1980*, and in particular the discretionary power contained in section 51A, authorising the transfer of permanent Teachers within the Teaching Service. No teacher is entitled to be transferred at his or her request, and these Guidelines should be read in that context.

The Section 51A Compassionate Transfer Guideline (the Guideline) provides advice on the appropriate use of Section 51A when compassionate grounds are established as outlined in the [Agreement between the NSW Department of Education and the NSW Teachers Federation on the Staffing of NSW Public Schools 2016-2020 \(the Staffing Agreement\)](#).

The Guideline facilitates a transparent and consistent approach to requests for compassionate transfer by establishing threshold criteria necessary to meet the requirements for exceptional and compelling circumstances necessitating transfer from a school.

2. Audience and Application

This Guideline applies to:

- Permanent Teachers covered by the Staffing Agreement requesting a transfer from their current school, based on exceptional and compelling circumstances.
- Teacher Recruitment, Work Health & Safety (WHS), and Employee Performance & Conduct (EPAC) staff advising directors about eligibility for transfer on compassionate grounds.
- Principals, directors and executive directors who are responsible for approving applications for transfers on compassionate grounds.

3. Responsibilities and Delegations

The Department of Education (the Department) will maintain the Guideline.

Principals, directors and executive directors should use this Guideline when considering applications for transfers on compassionate grounds for Teachers in NSW Public Schools in accordance with the Staffing Agreement.

Teachers will follow this Guideline when applying for a transfer on compassionate grounds.

4. Guideline for Section 51A Transfer on Compassionate Grounds

4.1 Eligibility Criteria

An application for Transfer on Compassionate Grounds (the Application) can be made to the Principal (or Director in the case of a principal) where the permanent teacher:

- has exceptional and compelling circumstances, beyond their or their principal's control (or director's control in the case of a principal);
- provides supporting documentation from an independent third party substantiating the claim;

- justifies both the request to move from the applicant's current school and to transfer to the preferred school;
- has a situation that cannot be suitably managed locally by alternative means;
- has satisfactorily participated in a Performance and Development process; and
- has no outstanding performance or conduct matters.

The principal, director and executive director should consult with Employee Performance & Conduct (EPAC) in regard to any outstanding performance or conduct matters.

A transfer on compassionate grounds can relate to a Teacher's responsibilities for the care and support of their spouse, partner or dependent child.

On lodgement, an application will be considered as a matter of priority and will remain active unless the circumstances which led to the application change. Accrued transfer points are not applicable to a transfer on compassionate grounds.

There is no guarantee of transfer on compassionate grounds and each matter is dealt with on a case by case basis.

Any transfer is subject to the applicant, at the time of appointment:

- being able to fulfil the inherent requirements of the role; and
- demonstrating satisfactory performance.

4.2 Exceptional and Compelling Circumstances

Circumstances are regarded as exceptional and compelling where the current location causes undue hardship to an applicant because of:

- medical circumstances;
- environmental circumstances;
- serious personal circumstances; and/or
- extraordinary circumstances as determined at the discretion of the Executive Director, Public Schools NSW.

Exceptional and compelling circumstances are beyond the control of the applicant or their principal (or director in the case of a principal).

4.2.1 Medical Circumstances

Medical circumstances causing undue hardship may include:

- serious medical illness or injury, and/or
- disability;

affecting the applicant, their partner, spouse or dependent child.

The applicant must provide documentation from a registered medical practitioner articulating the reasons why the teacher is required to live in a particular location, or why the existing location's environmental conditions are a catalyst for a chronic medical condition and the likely duration of this need.

4.2.2 Environmental Circumstances

Environmental circumstances causing undue hardship may include:

- a demonstrated and documented adverse, threatening or hostile environment arising from factors such as religious, racial or sexual persecution or harassment.

The applicant must provide information detailing:

- the nature of the environmental concerns;
- why there are no other suitable ways of addressing or alleviating the situation;
- contemporaneous evidence of what actions they took to remedy the adverse environmental circumstances (prior to submitting the compassionate transfer application); and
- the outcome of that remedial action.

4.2.3 Serious Personal Circumstances

Serious personal circumstances causing undue hardship are:

- where an applicant whose spouse or partner is appointed on incentive transfer in or out of eight and / or six point incentive schools;
- where an applicant whose spouse or partner is:
 - employed in an operational role within an emergency services department, and
 - forcibly transferred to another location within an emergency services department;

that result in a Teacher permanently residing separately from their spouse or partner due to geographical distances required for travel.

Note:

- The above circumstances do not guarantee a transfer on compassionate grounds will be granted.
- Teachers should consider the availability of suitable vacancies for their spouse or partner before applying for a central appointment transfer or accepting a promotion if the relocation could affect their family and/or partnership circumstances.

4.2.4 Extraordinary circumstances

If there are extraordinary circumstances outside those categories already listed above the Executive Director, Public Schools NSW has discretion to consider whether those circumstances are sufficient to warrant granting an application for transfer on compassionate grounds.

4.2.5 Preferred Locations

Exceptional and compelling circumstances need to justify both the request to move from the applicant's current school and to transfer to the preferred school.

4.2.6 Circumstances not considered

Circumstances that are generally not considered exceptional or compelling include:

- unsubstantiated medical applications;
- issues associated with commercial or business interests;
- separation from spouse, partner or family without additional hardship grounds;

- personal relationship breakdown;
- voluntary or self-initiated residential relocation;
- distance of travel to and from current school;
- financial difficulties due to travel from place of residence and associated issues;
- previous compassionate transfers cases.

Previous decisions about compassionate transfers of teachers do not set a precedent to determine exceptional and compelling circumstances. Each case will be assessed on its individual merits.

4.3 Application Process

4.3.1 Online Application

If an applicant meets all the eligibility requirements as detailed in 4.1 they may:

- submit an online [Application for s51A Transfer on Compassionate Grounds](#) to their Principal (or to their Director, PSNSW in the case of principals);
- attach all supporting documentation.

4.3.2 Supporting documentation

Supporting documentation can include:

- evidence from medical practitioners i.e. medical reports, certificates or letters;
- letters from courts;
- evidence of bona fide domestic relationship e.g. marriage certificate or statutory declaration;
- letters from emergency services department confirming the forced transfer;
- Police reports;
- letters from allied health professionals, e.g. counsellor or psychologist;
- evidence of attempts made to relocate using alternate means i.e. job applications.

The Department reserves the right for an appropriate representative to contact parties relevant to the supporting documentation, with the approval of the applicant.

4.3.3 Determining application outcomes

Principals will:

- Consider each case and supporting evidence on its merits to determine if eligibility requirements and thresholds are met;
- Confer with WHS regarding any outstanding matters that may impact an applicant's ability to fulfil the inherent requirements of the role;
- Confer with EPAC regarding any outstanding performance or misconduct matters relevant to applications;
- Confer with Teacher Recruitment regarding eligibility requirements and application process, (as required); and
- Formulate recommendations (supported/not supported) and forward applications to the Director, PSNSW for consideration.

Directors will:

- Consider each case and supporting evidence to determine if eligibility requirements and thresholds are met;
- Formulate recommendations (endorsed/not endorsed) and refer endorsed cases to the Executive Director, PSNSW for consideration; and
- Communicate outcome decisions to applicants and Teacher Recruitment.

Executive Directors have the delegated and discretionary authority to approve an application for transfer on compassionate grounds and will:

- Consider each case and supporting documentation on its merits to determine if eligibility requirements and thresholds are met; and
- Communicate the outcome decision to the Director, PSNSW and Teacher Recruitment for appropriate action.

Information provided to support an application will be treated with the strictest confidence and will not be disclosed to parties outside those involved in advising on, administering or authorising the transfer process.

4.4 Managing decision outcomes

If the application is declined the applicant is notified of the outcome in writing by the Director, PSNSW, and the Teacher may seek advice about other options, including:

- applying for positions on merit;
- taking leave and working in a temporary/casual capacity in the preferred area;
- applying for other transfer types;
- accessing Family & Community Services (FACS)/Carers leave.

If the application is approved by the Executive Director, PSNSW, Teacher Recruitment will liaise with the Director, PSNSW to case manage approved transfers.

Applicants who have been given a compassionate transfer will have their eligibility for Transferred Officers Compensation determined in accordance with the relevant provisions of the Department, when appointed.

4.5 Lapsing or Change in Circumstances

Applications remain active unless the circumstances which led to the application change, or are withdrawn by the Teacher. If the circumstances for a compassionate transfer cease, an alternate staffing method transfer as prescribed in the [Staffing Procedure for the Teaching Service in NSW Public Schools](#) may be initiated.

Teachers must submit further documentation as circumstances change.

All undetermined compassionate transfer requests existing as at 26 April 2016 will be dealt in accordance with this Guideline by Teacher Recruitment in consultation with the relevant School Executive.

Teachers will be notified of any change to their compassionate application status by Teacher Recruitment

All active matters will be reviewed every 12 months by the relevant Director, Public Schools NSW, with the onus on the applicant to provide updated supporting documentation to verify that their circumstances remain unchanged.

5. Monitoring, evaluation and reporting requirements

All staff transfers made under s51A on compassionate grounds are to be considered central appointments and are monitored and reported accordingly.

6. More information

For further information on this procedure, please contact the Manager, Teacher Recruitment on 9836 9599.

7. Document history

7.1 Document information

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7.4 Document linkages

Legislation and regulation

Relevant legislation and regulation that determines influences or defines this guideline:

Year of enactment	Title of legislation
1980	Teaching Service Act
2014	Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2014
2016	Agreement between the NSW Department of Education and the NSW Teachers Federation on the Staffing of NSW Public Schools 2016-2020 (the Staffing Agreement)

Policy and Guideline

Reference policy or procedure that relates to this guideline:

Type	TRIM-PD Number	Title
Procedure	DOC16/247509	Staffing Procedure for the Teaching Service in NSW Public Schools

8. Terms and Definitions

Definitions of terms that are contained in this Guideline:

Term	Definition
Appropriate Representative	A Departmental officer involved in advising on, administering, or authorising the transfer process.
Dependent Child	Includes the applicant's natural child, an adopted child, a step child, a foster child, or an ex-nuptial child still financially dependent and under the age of 18 years.
Emergency Services Department	means all operational members of the following NSW Police Force, NSW Fire and Rescue, NSW Rural Fire Service, State Emergency Services, and Ambulance Service of NSW or their successors, and the Australian Defence Forces.
Undue Hardship	means significant difficulty or expense, not limited to financial difficulty but includes personal impacts that are unduly extensive, substantial, or disruptive to the applicant.
Incentive School	means all schools referred to in Appendix 2B of the Staffing Procedure.
Partner	A person of the same or opposite sex, although not legally married to the applicant, lives in a defacto relationship with the applicant, i.e. on a bona fide / genuine domestic basis.
Teacher	means a permanent members of the NSW Teaching Service, employed under the <i>Teaching Service Act, 1980</i> , and working in a NSW Public School, including Classroom Teachers, Executive, and Principals.
Spouse	means someone who is legally married to the applicant.
Staffing Procedure	means <i>Staffing Procedure for the Teaching Service in NSW Public Schools</i> .