
11 SEPARATION FROM THE SERVICE

Table of Contents

11	SEPARATION FROM THE SERVICE	1
11.1	Resignation or Retirement.....	2
11.1.1	General	2
11.1.2	Notice of Resignation or Retirement (Separation)	2
11.1.3	Effective Date of Resignation or Retirement.....	3
11.1.4	Resignation or Retirement During a Term	3
11.1.5	Payment of Entitlements.....	3
11.1.5.1	Vacation Payment Entitlement	3
11.1.5.2	Long Service Leave/Extended Leave- Payment of Monetary Value	4
11.1.6	Reason for Separation from the Service	4
11.1.7	Records of Employment	4
11.1.8	Federal Elections.....	4
11.2	Medical Retirement	5
11.2.1	General	5
11.2.2	Self-referral Medical Retirement	5
11.2.3	Independent Medical Capacity Assessment.....	5
11.2.4	Review Panel	5
11.2.5	Medical retirement and workers compensation.	6
11.2.6	Last Day of Service	6
11.2.7	Vacation pay and extended leave/Long Service Leave	6
11.2.8	Re-employment of Medically Retired Teachers	7

11.1 Resignation or Retirement

11.1.1 General

Before resigning from the Teaching Service, teachers should ensure that other available options such as extended leave/long service leave, leave without pay, permanent part time work, part time leave without pay or parental leave have been considered.

Compulsory retirement based on age is unlawful in New South Wales. It is up to individual teachers to decide when they retire.

Teachers considering resignation or retirement should consult their own superannuation fund or scheme for advice on the superannuation aspects of their particular situation.

Except where provided at clause 11.1.2.(c), once submitted, a separation request will be considered to have been accepted by the Department.

11.1.2 Notice of Resignation or Retirement (Separation)

- a) A notice of resignation or retirement should be submitted in SAP through the on-line "Request separation" service— Refer to the [Separation and Leaving the Department](#) information and QRGs for guidance. Staff unable to access the on-line request separation service should contact EDConnect to obtain a [separation form](#).
- b) Where a teachers separation is effective during or at the end of a school vacation, the notice of separation should be submitted at least one month prior to the last day of the preceding school term.
- c) The Department has the authority not to accept a teacher's notice of separation where the teacher is the subject of an investigation or other sensitive management process.
- d) To assist in the selection of appropriate and qualified staff and to ensure prompt payment of benefits, where possible, teachers are asked to submit their notice as early as practicable, and at least one month prior to the date the separation is to be effective.
- e) Where a form is used to request a separation as per 11.1.2 (a), when completed by a teacher and signed by the principal, it should be sent by the principal to EDConnect. In the case of a principal, the separation form should be signed by the director educational leadership.
- f) Any comments or communications made by the principal (in the case of a teacher providing notice of separation) or by the director educational leadership (in the case of a principal providing notice of separation), on the form or in connection with a notice of resignation or retirement submitted in SAP, must be shown to the staff member providing notice of separation.
- g) Permanent teachers who resign or retire may seek approval to work with the NSW Department of Education in a casual or temporary capacity. This approval will be subject to the principal or director, educational leadership endorsing the request.

Approval will not be granted if:

- the principal/ director educational leadership recommends that the teacher

11 Separation from the Service

- should not work in a casual or temporary capacity, or
- in the case where a form has been used, the principal or director fails to complete the relevant recommendation on the separation form; or
- the teacher's separation has been tendered as part of a resolution of an investigation, other sensitive management process or workers' compensation claim.
- there has been a recommendation to decline any such request.

The approval is also contingent on:

- the teacher maintaining a valid , Working With Children Check;
- submitting a pre employment health declaration ; and
- possessing a current accreditation with NESAs; and
- in some cases, relevant information provided by other operational areas of the department.

Where separation has been the outcome of medical retirement, see 11.2.9 regarding the approval process.

h) In cases where the principal/director educational leadership recommends that the staff member giving notice of resignation or retirement should not work in a casual or temporary capacity, procedural fairness will be applied and the reasons for the decision must be provided to the staff member

11.1.3 Effective Date of Resignation or Retirement

- a) When completing a separation request, teachers must indicate the effective date of resignation or retirement (the last day of service which may be a day that the teacher is on approved leave). Care should be taken in selecting this date as payment of benefits such as extended leave/long service leave and superannuation can be dependent on length of service and age.
- b) Teachers separating while on leave of absence may nominate the separation to become effective from the date of the separation request or they may nominate a date which is on or before the last date of the approved leave. If the separation is submitted after the last date of approved leave and the teacher did not return to duty, the teacher may nominate the separation to be effective from the date the separation request is submitted or backdated to the last day of approved leave.

11.1.4 Resignation or Retirement During a Term

Where a teacher's separation becomes effective during, or on the last day of, a school term, payment of salary and service accrual ceases at the end of the school day on which the separation becomes effective.

11.1.5 Payment of Entitlements

11.1.5.1 Vacation Payment Entitlement

Upon the retirement or resignation of a teacher, or any other termination of that teacher's services, other than for willful misconduct, the teacher shall be paid any entitlement under subclause 7.4 of [Determination No. 6 of 2016 – Annual Leave and Payment for Non Attendance by Teachers in Non Term Weeks](#), which has not already been paid to the teacher during that school year. In calculating this entitlement, the last day of service will be the date of resignation, retirement or termination.

11.1.5.2 Extended Leave/Long Service Leave/ - Payment of Monetary Value

Subject to clause 11.1.6 Reasons for Separation from the Service, a teacher who has acquired a right to extended leave and/or long service leave will be paid the monetary value of any leave entitlement on resignation or retirement.

11.1.6 Reason for Separation from the Service

- a) The reason for resignation or retirement should be indicated on the separation form in the appropriate space, e.g. personal reasons, other employment, illness, incapacity, other pressing necessity etc.
- b) Completion of this section is particularly relevant to teachers who have completed more than five years but less than ten years service. Where a teacher has not acquired a right to long service (after 10 years) or extended leave (after 7 years), payment of a pro-rata entitlement is made where the reason for separation is because of illness, incapacity, or other pressing necessity. Pressing necessity may include marriage, family responsibilities, child rearing or the impending birth of a child.

11.1.7 Records of Employment

- a) Current and former teaching service staff who require a record of employment or Employment Separation Certificate should submit a request to EDConnect.
- b) A record of employment does not indicate suitability for further employment nor does it constitute a reference.
- c) Any teacher who attempts to falsify information on a record of employment may be liable to disciplinary action.

11.1.8 Federal Elections

See Section 4.11.15.2, [Leave Without Pay](#) for details.

11.2 Medical Retirement

11.2.1 General

A permanent teacher, who because of invalidity or physical or mental incapacity, is unable to perform the duties of her or his substantive position may be medically retired from the Teaching Service. The Executive Director has the delegation to decide whether an employee should be medically retired or not.

For further information refer to the Department's [Medical Retirement Guidelines](#).

11.2.2 Employee Initiated Medical Retirement

A permanent teacher with a non-work related injury or health condition can self refer for medical retirement. The teacher is responsible for obtaining the required medical reports and completing the documentation required. For further information refer to the Department's [Medical Retirement Guidelines](#).

11.2.3 Independent Medical Capacity Assessment

In some cases a teacher may be asked to attend an independent medical capacity assessment to obtain medical information as to their prognosis to undertake the inherent requirements of their substantive position.

Refer to the Department's [Independent Medical Capacity Assessment Guidelines](#) for further information.

Following medical examination, a teacher may be found fit for modified or alternate duties within the Department. Consideration will be given to whether reasonable adjustments can be accommodated or whether there are alternate positions available for the teacher which meet the permanent medical restrictions, given consideration to the functions requirements of the position(s). The overall objective is to ensure all potential alternate employment options within the Department have been investigated.

If the final recommendation from the Independent Medical Capacity Assessment is that the teacher is permanently unfit to undertake the inherent requirements of their substantive position, medical retirement may be considered.

Further, if the final recommendation from the Independent Medical Capacity Assessment is that the teacher is fit for duty within the Department with reasonable adjustments and there are no other alternate employment options available, medical retirement may be considered.

11.2.4 Review of Medical Assessment

- a) Teachers will be informed of the final recommendation from the independent medical capacity assessment and their right to request a review of the recommendations resulting from the assessment
- b) The review period is 21 calendar days from the date of the medical report.
- c) No action to proceed with the medical retirement of a teacher is taken until:

11 Separation from the Service

- i) the teacher waives their right of review; or
 - ii) the 21 day review period has expired with no review lodged; or
 - iii) the review is determined.
- d) Where a teacher is found unfit for the duties of their position the teacher may be medically retired under Section 76 of the *Teaching Service Act 1980*.
- e) Where a review is lodged against the decision that a teacher remains fit for work, no administrative action is taken regarding the allocation of any sick leave until the outcome of the review is known. If the review is upheld, sick leave to credit will be granted. The teacher may resume duty pending the outcome of their review.
- f) where an employee initiates the medical retirement, there is no review period or review process available.
- g) where the Department initiates medical retirement based on medical information obtained from the Claims Manager in respect of a teacher with a workers compensation claim, there is no review period or review process available

11.2.5 Medical retirement and workers compensation.

If a teacher has a workers compensation claim, medical retirement may be considered if all rehabilitation and return to work options have been exhausted.

Teachers with a workers compensation claim who are medically retired should contact the Department's Claims manager regarding the continuation of any workers' compensation benefits.

Refer to Department's [Medical Retirement Guidelines](#) for further information.

11.2.6 Last Day of Service

The last day of service of a teacher who is to be medically retired will be the date that the Executive Director signs the medical retirement letter unless the teacher, because of special circumstances, is permitted to take a period of long service leave/extended leave or leave without pay, in which case the last day of service will be the date that leave ceases. This can occur where the teacher would otherwise suffer financial disadvantage by not being in the service to qualify for a salary increase or further superannuation units.

The signing of the medical retirement letter by the Executive Director is subject to the provisions of 11.2.4 Review Panel, including the review period of 21 calendar days from the date of the medical report.

A teacher who is absent on sick leave prior to medical retirement may be granted special sick leave up to the last day of service at the discretion of the Secretary of the Department.

11.2.7 Vacation pay and Extended leave/Long Service Leave

Following determination of a teacher's last day of service, the Department will automatically calculate any vacation pay or extended leave/long service leave entitlement and pay any benefits as a lump sum.

11.2.8 Re-employment of Medically Retired Teachers

- a) Before a teacher is re-employed in any capacity (including casual or temporary) after having been medically retired, the teacher must:
- i) complete a new approval to teach application and health declaration form attach a certificate of fitness from the registered medical practitioner who treated them for the health condition, they were medically retired for. If this is not possible, a certificate for fitness from a registered medical practitioner who has consulted with the applicant for at least the previous twelve months.
 - ii) complete relevant assessments as part of the approval process, including a personal suitability assessment and where applicable a medical assessment.;
 - iii) if successful in meeting the requirements of the approval to teach process, the applicant may be asked to undertake a medical examination for the purposes of determining fitness for re-employment as a teacher. The medical examiner will be determined by the Department.
 - iv) Advice may also be obtained from the Department's Health and Safety Directorate
- b) Teachers who have been approved to resume duty will be given, on compassionate grounds, the same status for appointment to a suitable vacant position as other teachers with compassionate status for transfer.

It will be in the teacher's best interest to include a broad range of schools in which they are prepared to work. The appointment of such teachers will be subject to the availability of a suitable vacancy.