

# **Kaiarahi i te Reo, Therapists', ATSSD and Special Education Assistants' Collective Agreement**

**27 January 2010 to 31 March 2011**

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## **PART 1**

### **Coverage/Term of Agreement**

#### **1.1 Parties to the Agreement**

The parties to this agreement shall be NZEI Te Riu Roa and the Secretary for Education acting under delegation from the State Services Commissioner made pursuant to s 23 State Sector Act 1988 and acting in accordance with s 74(5) of that Act.

#### **1.2 Coverage**

- (a) This agreement is binding on every employer as defined in 1.3.1.
- (b) This agreement is applicable to every employee employed as a kaiarahi i te reo, an assistant to teachers of students with severe disabilities (hereafter referred to as ATSSD), a special education assistant, an occupational therapist or a physiotherapist.
- (c) This agreement is binding on those employees who are or who become members of NZEI Te Riu Roa.

#### **1.3 Interpretation and Definitions**

**1.3.1** “Employer” means a board of trustees (or Commissioner if applicable) of a state or integrated primary, intermediate, secondary or composite school, as defined in the Education Act 1989. It does not include the Board of Trustees of the Correspondence School.

**1.3.2** “ATSSD” means an employee who works alongside teachers, assisting with the education of students with severe disabilities.

**1.3.3** Ko te kaiarahi i te reo he kaimahi e matatau ana i te reo Maori me ona tikanga, e mahi tahi ana i te taha o te kaiako, e tautoko ana i te reo Maori.

A “Kaiarahi i te reo” is an employee who is fluent in Maori language and has an in-depth knowledge of Maori traditions and beliefs and works alongside a teacher supporting Maori language.

**1.3.4** “Special education assistant” means an employee who works alongside teachers and therapists, assisting with the education of students with physical disabilities.

**1.3.5** “Therapist” means an employee engaged as a nationally registered physiotherapist and/or occupational therapist holding a current annual practicing certificate.

#### **1.4 Term of the Agreement**

The term of this agreement is 27 January 2010 to 31 March 2011.

#### **1.5 Variation Clause**

The parties agree that the terms and conditions in this agreement may be varied at any time by written agreement between NZEI Te Riu Roa and the Secretary for Education acting under delegation from the State Services Commissioner made pursuant to s 23 State Sector Act 1988.

## **PART 2**

### **Term of Employment**

#### **2.1 Good Employer/Equal Employment Opportunities and Pay and Employment Equity**

##### **(a) Good Employer/Equal Employment Opportunities**

Attention is drawn to Part VIIA State Sector Act 1988 which outlines the responsibilities of the employer with regard to the operation of a personnel policy that complies with the principle of being a good employer and the equal employment opportunity responsibilities of the employer.

##### **(b) Pay and Employment Equity**

The Ministry of Education and NZEI Te Riu Roa agree with the Government's aspiration in the Pay and Employment Equity Plan of Action that remuneration, job choice, and job opportunities in the state education sector should not be affected by gender.

A tripartite group comprising the Ministry of Education, the NZEI and the New Zealand School Trustees Association is to engage over the development and application of Pay and Employment Equity tools and processes in the education sector as they become available. The group are to develop an appropriate response plan for any inequities found as part of this process.

#### **2.2 Appointments**

**2.2.1** All appointments to positions shall be permanent unless identified as being fixed term.

**2.2.2** Every appointee to a vacancy shall be notified in writing of:

- (a) the appointment;
- (b) the salary to be paid; and
- (c) when or how the employment will end and the reasons for the employment ending in that way if the appointment is for a fixed term,

#### **2.3 Appointment Criteria**

Attention is drawn to the State Sector Act 1988 insofar as it provides that the person best suited to the position shall be appointed. In applying that provision the employer will have regard to the experience, qualifications and abilities relevant to the position and such other relevant matters as it determines.

#### **2.4 Fixed Term Appointment**

**2.4.1** An employee and an employer may agree that the employment of the employee will end:

- (i) at the close of a specified date or period; or
- (ii) on the occurrence of a specified event; or
- (iii) at the conclusion of a specified project.

**2.4.2** Before an employee and employer agree that the employment of the employee will end in a way specified in 2.4.1, the employer must:

- (i) have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and
- (ii) advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.

**2.4.3** If an employee and employer agree that the employment of the employee will end in a way specified in 2.4.1, the employee's employment agreement must state in writing:

- (i) the way in which the employment will end;
- (ii) the reasons for the employment ending in that way.

**2.4.4** The following reasons are not genuine reasons for the purposes of 2.4.2:

- (i) to exclude or limit the rights of the employee under the Employment Relations Act 2000;
- (ii) to establish the suitability of the employee for permanent employment.

## **2.5 Hours of Work (other than therapists)**

The regular working hours of employees other than therapists will be set by the employer, in consultation with the employee, but will not exceed 40 hours per week unless otherwise agreed by the employer and employee.

## **2.6 Therapist Hours of Work**

- (a) Except as provided under (b) below the ordinary hours of a full-time therapist shall be 38 hours per week, Monday to Friday inclusive. Therapists' duties may include:
- preparation, planning and organisation of equipment and therapy;
  - evaluation, reporting and follow-up;
  - professional liaison and home visits;
  - updating systems, contracts and case notes;
  - administration and recording;
  - attending meetings and courses; and
  - professional development.
- (b) A therapist (either full-time or part-time) who, before 3 April 2002, chose to retain their hours of work based upon the then current 30 hours per week, shall retain those hours, noting 3.3.6 below.

## **2.7 Meal Breaks**

No employee shall be required to work more than five hours without an uninterrupted break for a meal, such breaks to be not less than 30 minutes and no more than one hour in duration except where otherwise agreed.

## **2.8 Paid Breaks**

- (a) Employees shall be entitled to paid breaks in accordance with (b) and (c) below;
- (b) Employees working 5 hours or more per day may, on any such day, take either:
- (i) one 20 minute break in the morning; or
  - (ii) one 10 minute break in the morning and one 10 minute break in the afternoon.
- The timing of the break(s) shall be such that it takes into account:
- That the operational needs of the school are not compromised; and
  - That the employee concerned is afforded a genuine break.
- (c) Employees working 2 hours or more but less than 5 hours per day are entitled to either one break of 10 minutes in the morning or one break of 10 minutes in the afternoon. The timing of the break shall be such that it takes into account:
- That the operational needs of the school are not compromised; and
  - That the employee concerned is afforded a genuine break.

**PART 3  
REMUNERATION**

**3.1 Special Education Assistants**

**3.1.1** Salaries payable to special education assistants are:

Step	14/1/2009	Step	27/01/2010
1	25,293	1	\$29,120
2	27,504		
3	28,970		
		2	\$30,410

**3.1.2** From 27 January 2010, all employees paid on the Special Education Assistants' pay scale will translate to the new Step 1 (\$29,210) of the new pay scale. This translation will not affect their anniversary dates for incremental progression (i.e. an employee who was employed on Steps 1-3 of the old pay scale (effective 14 January 2009) and translated to Step 1 of the new pay scale on 27 January 2010 will increment to Step 2 on their next anniversary date in 2010, subject to meeting or exceeding the performance standards described in clause 3.1.3 below).

**3.1.3** Scale increments - special education assistants shall, upon the completion of 12 months service at Step 1, advance to the next step on the salary scale. This is provided that the employer attests that the employee has met or exceeded standards of performance as assessed by the employer against the written requirements of the position. Where written requirements do not exist the employee will be consulted in determining the written requirements.

**3.2 Kaiarahi i te Reo and ATSSD**

**3.2.1** Salaries payable to kaiarahi i te reo are:

Step	14/01/2009	27/1/2010
1	31,087	\$31,522
2	31,930	\$32,377
3	32,771	\$33,230
4	33,432	\$33,900
5	34,093	\$34,570
6	34,998	\$35,488
7	35,902	\$36,405
8	36,808	\$37,323
9	37,709	\$38,237
10	38,642	\$39,183
11	39,574	\$40,128
12	40,503	\$41,070
13	41,436	\$42,016
14	42,366	\$42,959
15	43,298	\$43,904
16	44,311	\$44,931
17	45,323	\$45,958

**3.2.2** Salaries payable to ASTTD are:

Step	14/01/2009	27/1/2010
1	29,549	\$29,963
2	30,349	\$30,774
3	31,153	\$31,589
4	31,781	\$32,226
5	32,410	\$32,864
6	33,268	\$33,734
7	34,127	\$34,605

8	34,988	\$35,478
9	35,062	\$35,553
10	36,731	\$37,245
11	37,616	\$38,143
12	38,502	\$39,041
13	39,386	\$39,937
14	40,271	\$40,835
15	41,156	\$41,732
16	42,119	\$42,709
17	43,083	\$43,686

**3.2.3** Relieving employees - A relieving employee shall be paid a salary at the appropriate rate specified in 3.2.1 or 3.2.2 above.

**3.2.4** An employee may upon appointment be placed at any point within the appropriate salary scale under 3.2.1 or 3.2.2 above. Factors to be considered in deciding the actual starting rate include:

- (i) previous relevant paid or unpaid work experience;
- (ii) level of skill required for the position;
- (iii) recognition of qualifications;
- (iv) level of responsibility required for the position;
- (v) the level of te reo Maori and understanding of nga tikanga Maori required for the position;
- (vi) the ease or difficulty in recruiting and/or retaining the specific skills and/or experience required for the position.

**3.2.5** Scale increments - On completion of one year's service on a step on the salary scale employees shall be paid on the next higher step until the maximum step is reached. This is provided that the employer attests that the employee has met or exceeded standards of performance as assessed by the employer against the written requirements of the position. Where written requirements do not exist the employee will be consulted in determining the written requirements.

*Note:* Movement to steps 16 and 17 is subject to 3.2.6.

**3.2.6** Movement for kaiarahi i te reo and ATSSD to step 16 and 17, after one year's service on each step, is subject to the employer attesting that the employee has met or exceeded standards of performance, and shown proven initiative in the performance of their duties, as assessed by the employer against the written requirements of the position. Where written requirements do not exist the employee will be consulted in determining the written requirements.

**3.2.7** Shared positions - Employees who are in shared positions shall be paid on a proportion of the salary rate that they would have been paid had they been employed full-time, excluding any allowances to which they would otherwise have been entitled.

### **3.3 Therapists**

**3.3.1** This shall include all positions with the following or similar designations:

- Charge physiotherapists and occupational therapists;
- Sole charge physiotherapist and occupational therapists;
- Staff physiotherapists and occupational therapists.

#### **Translation and progression**

**3.3.2** The salaries listed are minimum rates of pay.

<b>Steps</b>	<b>3/7/2009</b>		<b>27/1/2010</b>
		13	\$72,650
12	\$69,156	12	\$69,848
11	\$66,229	11	\$66,891
10	\$63,740	10	\$64,377
9	\$61,251	9	\$61,864
8	\$58,711	8	\$59,298
7	\$56,273	7	\$56,836

6	\$53,836	6	\$54,374
5	\$51,347	5	\$51,860
4	\$48,919	4	\$49,408
3	\$46,532	3	\$46,997
2	\$44,146	2	\$44,587
1	\$42,024	1	\$42,444

**3.3.3** Therapists on Step 12 will increment to Step 13 on their next anniversary date on or after 27 January 2010 (subject to clause 3.3.4 below)..

**3.3.4** Incremental progress on the pay scale shall be on an annual basis providing the employer assesses that the employee has met or exceeded the agreed performance objectives for the position.

**3.3.5** Any employee paid in excess of \$42,000 at the time of settlement of the Support Staff in Schools' Collective Agreement 2001-2003 as per clause 3.9.5 of that agreement shall retain that rate until it is exceeded by progression from which point progression as per clause 3.3.4 will apply. Any additional salary payments may continue to be paid by a board at their discretion from their own funding.

**3.3.6** A therapist (either full-time or part-time) who retained their hours of work based on a 30 hour week as per 2.6 (b) of this agreement shall retain that salary, until through incremental movement that salary would be less than 0.8 of the new rate on the current scale, before an increase would apply.

### **Appointment**

Note: Clauses 3.3.7-3.3.9 shall not apply to appointments made before 2 January 2008.

**3.3.7** A therapist shall, upon initial appointment, be placed on a step in the salary scale in accordance with their relevant academic or professional qualification(s) and recognised previous relevant service.

**3.3.8** As a guide, a therapist who has a relevant academic or professional qualification(s) but who has no recognised previous relevant service should be placed in the salary scale according to the following:

#### **Relevant Academic or Professional Qualification(s) and entry steps**

- A three year (360 credit) Bachelor Degree - step 1
- A four year (480 credit) Bachelor Degree - step 1
- A three-year (360 credit) Bachelor Degree plus a one-year (120 credit) Graduate (level 7) Diploma - step 1
- A Bachelor Degree plus a one-year (120 credit) Post-Graduate (level 8) Diploma - step 2
- A Masters Degree - step 3
- A Masters Degree plus a one – year (120 credit) Post – Graduate (level 8 or higher) Diploma - step 4

**3.3.9** A therapist who, in addition to their relevant academic or professional qualification(s), has recognised previous relevant service shall be credited with a further step in the scale for each completed full-time year of recognized previous relevant service up to step 8. Recognised previous relevant part-time service shall be credited on a pro-rata basis. For the purposes of this provision:

- (i) Recognised previous relevant service shall include service in New Zealand as an Occupational Therapist or Physiotherapist.
- (ii) Recognised previous relevant service may also include other service relevant to the employee's position.
- (iii) Less than full credit may be given on appointment for other related, but not directly relevant, experience.

### **3.4 Review Process**

Where an employee wishes to have their salary review reconsidered they shall refer the matter to the Board of Trustees. The employee shall have the right to representation at any stage.

### **3.5 Part Time Employees**

Except as provided under 3.3.6 the salary of a part-time employee shall be a proportion of the rate in the basic scale which would apply to that employee if the employee were employed full-time.

### **3.6 Direct Crediting of Salaries**

Salaries shall be paid fortnightly by direct credit to the employee's nominated bank account. However, individual employees may on religious or ethical grounds apply to the board of trustees to be paid by cheque.

### **3.7 Recognised Qualifications**

- 3.7.1** Employees, other than therapists, holding qualifications agreed between the Secretary for Education and NZEI Te Riu Roa shall be paid an allowance, as follows:
- (a) Group One: \$500 per annum
  - (b) Group Two: \$750 per annum
  - (c) Group Three: \$1000 per annum.
- 3.7.2** The allowance shall be pro-rated for part-time employees.
- 3.7.3** Only one allowance shall be paid which shall be for the highest qualification held by the employee. Upon obtaining a higher recognised qualification the employee shall become eligible for the higher payment.
- 3.7.4** The list of recognised qualifications is annexed as Appendix A to this agreement.
- 3.7.5** The list reflects qualifications that have been deemed relevant to the work of the occupational groups to which this agreement is applicable. In general terms Group One reflects qualifications registered on the NZ Qualifications Framework at level 4, and those agreed to be of an equivalent level. It includes teacher aide qualifications registered on the NZQF at level 3 or other teacher aide qualifications from registered providers agreed to be of an equivalent level. Group Two reflects qualifications registered on the NZQF at levels 5-6 and those agreed to be of an equivalent level. Group Three reflects qualifications registered on the NZQF at levels 7-8 and those agreed to be of an equivalent level, including all New Zealand degrees, all graduate and post-graduate certificates and diplomas, and the Ministry of Education verified He Tohu Matauranga.
- 3.7.6** The parties may from time to time agree to recognise additional qualifications during the term of this agreement. The revised list of qualifications will be held by the Secretary for Education and NZEI Te Riu Roa. The complete list at any time will be available on the Ministry of Education website ([www.minedu.govt.nz](http://www.minedu.govt.nz)) and the NZEI website ([www.nzei.org.nz](http://www.nzei.org.nz)).

## **PART 4**

### **Leave**

#### **4.1 Service for Leave Purposes for Therapists**

- 4.1.1** (a) Except as provided in 4.2.2 below ‘Continuous service’ for leave purposes shall mean the aggregate of the employee’s employment with any state or state integrated school.
- (b) ‘Continuous service’ shall not be broken by
- any period of leave with pay; or
  - any period of approved leave without pay of up to 12 months; or
  - a break in employment (including between employers) of less than 3 months.
- (c) ‘Continuous service’ for a fixed term employee shall not be broken by
- a break of 20 consecutive working days or less between engagements; or
  - any period when the school is closed for instruction; or
  - absence on approved sick leave .
- (d) For the purposes of leave aggregation under (a) above any break between engagements, or any period of leave without pay, in excess of 20 consecutive working days will interrupt but not break (except as provided under (b) or (c) above) service. Parental leave will, however, count as service as provided for under s43 of the Parental Leave and Employment Protection Act 1987.
- 4.1.2** All service or continuous service accumulated after 1 March 1995 shall be calculated on the basis set out in 4.1.1 above. Those employees who were party to the Support Staff in Schools Collective Employment Contract which applied prior to 1 March 1995 retain all service or continuous service which they had accumulated prior to 1 March 1995.

#### **4.2 Sick Leave**

##### **4.2.1 Minimum entitlement**

Except as provided for under 4.2.5 an employee who works for the employer for a period of more than six months, or who has service recognised for the purposes of sick leave which exceeds 6 months, shall be entitled to 5 days sick leave on full pay on account of sickness or injury, in each ensuing period of 12 months. Unused sick leave under this provision may be accumulated and used at a later date but the next year’s entitlement cannot be anticipated.

##### **4.2.2 Additional entitlement (Table A)**

In addition to the entitlement in 4.2.1, the following sick leave shall be granted:

**Table A**

<b>Period of Service</b>	<b>Additional days for each period</b>
Up to 3 months	7 days
Over 3 months and up to 6 months	7 days
Over 6 months and up to 9 months	7 days
Over 9 months and up to 5 years	5 days
Over 5 years and up to 10 years	19 days
Over 10 years and up to 20 years	14 days
Over 20 years and up to 30 years	25 days
Over 30 years	22 days

Unused sick leave granted under Table A can be accumulated and used at a later date. The employer may permit employees to anticipate part or all of their next sick leave entitlement under Table A.

##### **4.2.3 Service for Sick Leave Purposes for Employees Other than Therapists**

For the purposes of sick leave “service” means the aggregate of:

- (a) all full-time employment with any state or integrated school;

- (b) part-time employment with any state or integrated school counted on the basis that 80 hours equals one month's service or 1000 hours equals one year's service and so on except that where part-time teaching service consists of 20 or more class contact hours per week it shall be credited as full-time service.

#### **4.2.4 Translation (Therapists)**

- (i) Therapists employed immediately prior to this agreement coming into force had their sick leave entitlement determined in accordance with the Support Staff in Schools' Collective Agreement (2004-05). In translating to the different sick leave provisions of this agreement they shall continue to receive their entitlement until their next entitlement falls due at which point they will translate into this agreement with their current accumulation. That date will become the operative anniversary date for both 4.2.1 and 4.2.2.
- (ii) If the operative anniversary date above coincides with a new period of service as per Table A then the additional days are provided together with the 5 days under 4.2.1.
- (iii) Where no additional days under Table A are provided in the 12 month period from the anniversary date the parties agree that for the following 12 months only, a therapist so affected shall continue to receive what would have been their entitlement under the Support Staff in Schools' Collective Agreement (i.e. either 6 or 7 days). At the end of that 12 month period 4.2.1 and 4.2.2 shall apply except that the same anniversary date shall apply for both sets of entitlement.

#### **4.2.5 Transitional sick leave**

An employee who immediately prior to this agreement coming into force had their sick leave entitlement determined under Appendix A of the Kaiarahi i te Reo, ATSSD and Special Education Assistants' Collective Agreement 2004-2005 shall on their next anniversary date retain any unused entitlement, as calculated under Table B or C (as appropriate) of that agreement and 4.2.1 and 4.2.2 of this agreement shall apply. The employee's entry point on Table A shall be worked out according to the employee's years of service.

#### **4.2.6 Application**

The provisions of this clause regulate the application of paid sick leave under 4.2:

- (i) Sick leave is to be debited on the basis of days of absence where absence is less than five consecutive working days on the basis of continuous days where the absence exceeds five consecutive working days.
- (ii) No deduction will be made for absences of less than two hours.
- (iii) An employee shall, up to a maximum of 5 days per year, be granted, as a charge against the employee's sick leave entitlement, leave with pay if an employee's spouse (or partner) or a person who depends on the employee for care, is sick or injured.
- (iv) When in excess of five days sick leave is taken a medical certificate from a registered medical or dental practitioner must be produced if the employer so requires.
- (v) The employee must inform the employer of the intention to take sick leave as early as possible before they are due to start work, or if this is not practical as early as possible after that time.
- (vi) Sick leave shall not be paid in respect of any public holiday for which the employee is entitled to full pay.

#### **4.3 Bereavement/Tangihanga Leave**

**4.3.1** An employee shall be granted bereavement/tangihanga leave on pay to allow a reasonable opportunity for the employee to discharge his or her obligations and/or to pay his or her respects to a deceased person with whom he/she has had a close association. The entitlement to this leave extends to the death of any members of the employee's family, or person who, because of particular cultural requirements on the employee, he or she is obliged to attend to as a part of a tangihanga or its equivalent.

**4.3.2** In exercising its discretion to grant this leave, and in fixing the length of leave, the employer must discharge its obligations in a culturally sensitive manner, taking into account the following:

- (a) the closeness of the association between the employee and the deceased;
- (b) the responsibilities of the employee for any or all of the arrangements for the ceremonies resulting from the death;

- (c) the amount of time needed properly to discharge any responsibilities or obligations by an employee; and
- (d) reasonable travelling time, provided that the employer need not take into account total travelling time where an employee must attend a funeral overseas.

However, any decision regarding the length of bereavement leave will be no less than the minimum amounts set out by s70 of the Holidays Act 2003.

- Note: (i) The minimum entitlement prescribed in the Holidays Act 2003 for a bereavement on the death of the employee's spouse, parent, child, brother or sister, grandparent, grandchild or spouse's parent is three days' paid leave.
- (ii) The minimum entitlement prescribed in the Holidays Act 2003 for a bereavement on the death of any other person where obligations such as those in 4.3.1 exist is one day.

**4.3.3** The employer's decision on this leave and the length of such leave will be made as quickly as possible so that the employee is given maximum time possible to make any arrangements necessary. In most cases the necessary approval will be given immediately, but may be given retrospectively where necessary. If paid leave is not appropriate then leave without pay shall be granted, but as a last resort.

- 4.3.4** (a) Where an employee is absent on annual leave and a bereavement occurs the employer shall be notified and will determine the number of days of bereavement leave to be granted in accordance with 4.3.2 above. The days shall replace the annual leave.
- (b) If bereavement leave is sought while an employee is absent on sick leave or any other leave with pay, the employer may agree to such leave being interrupted and bereavement leave being granted in its place.
- (c) The above provisions will not apply if the employee is on leave without pay.

**4.3.5** Payment of bereavement leave will be an amount that is equivalent to the employee's relevant daily pay for each day of bereavement taken by the employee that would otherwise be a working day for the employee.

#### **4.4 Long Service Leave**

On the completion of 20 years service special education assistants and therapists shall be granted 4 weeks long service leave with full pay. Such leave is to be taken within five years of the completion of 20 years service.

#### **4.5 Public Holidays and additional paid holidays**

**4.5.1** The Holidays Act 2003 shall apply except where otherwise provided.

**4.5.2** (a) The following days shall be observed as public holidays and paid in accordance with the provisions set out below:

- Christmas Day
- Boxing Day
- New Year's Day
- The day after New Year's Day
- Waitangi Day
- Good Friday
- Easter Monday
- Anzac Day
- Sovereign's Birthday
- Labour Day
- Anniversary Day (as observed in the locality concerned)

(b) In addition to the public holidays listed in clause 4.5.2(a) all staff shall be entitled to observe Easter Tuesday as an additional paid holiday. Therapists shall also be entitled to observe the day after Boxing Day as an additional paid holiday.

(c) Employees, for whom clause 4.6.7 below applies, shall no longer be entitled to an additional paid holiday on Easter Tuesday and, for therapists, the day after Boxing Day.

**4.5.3** In the event of a public holiday, other than Waitangi Day or Anzac Day, falling on a Saturday or Sunday, such holiday shall be observed on the following Monday, and in the event of another holiday falling on

that Monday then the whole holiday shall be observed on the succeeding Tuesday. For clarity this clause does not apply to paid additional holidays listed in clause 4.5.2 (b).

**4.5.4** Other than as provided in 4.5.6 below, employees shall be paid for the public holidays listed in 4.5.2 and the additional paid holidays listed in clause 4.5.2(b) above on the basis of the hours they would normally work on the day of the week on which the public holiday or additional paid holiday is observed. For clarity, public holidays and additional paid holidays which are observed during a term break shall be paid provided that the employee:

- (i) During term time normally works on the day of the week on which the public holiday is observed; and
- (ii) Is in continuous employment which extends beyond that term break.

**4.5.5** An employee whose employment is terminated (including expiry of a fixed term agreement) but whose final date of work is notionally extended by any annual leave holiday entitlement (in accordance with s.40 of the Holidays Act 2003) to include a public holiday falling on a day normally worked (including during a term break), would receive the relevant daily pay for that day.

**4.5.6** With regard to Christmas Day, Boxing Day, New Years Day and the day after New Years Day, these shall be paid public holidays for all employees who are employed within ten working days of the last day the school is open for instruction in an academic year. Provided that this shall also apply where the employee's employment ceases due to termination of the delivery of the curriculum to a particular student or students and this occurs within one month prior to the last day the school is open for instruction in an academic year. Payment for these public holidays will be on the basis that the employee:

- (i) During term time normally works on the day of the week on which the public holiday is observed; and
- (ii) Is in continuous employment which extends beyond the particular period during which the school is not open for instruction.

**4.5.7** Except as provided under 4.5.4 and 4.5.5 above, it is not intended an employee specifically on leave without pay would be eligible for a paid public holiday. Provided that an employee who has applied for and been granted a period of leave without pay which spans a term break shall not be entitled to payment for any public holiday which is observed within that term break.

**4.5.8** An employee who is required to work on a public holiday shall be paid at the rate of time and one half of their relevant daily pay for all time worked and shall be entitled to a paid day in lieu to be taken at a subsequent mutually agreed date.

## **4.6 Annual Leave**

**4.6.1** All annual leave shall be taken at a time in which the school is officially closed for instruction at the end of the academic year (unless there is, or has been, agreement to do otherwise).

**4.6.2** All employees are entitled, based on their current continuous service (as defined in 4.2) and the commencement dates contained in the clauses' titles to the leave provisions contained in 4.6.5, 4.6.6 or 4.6.7. No employee shall be covered by more than one of these three clauses at any point in time.

**4.6.3** For the purposes of annual leave, a 'week' of leave for an employee is based on his/her ordinary working week.

**4.6.4** Holiday pay will be paid in the employees' fortnightly cycle as per clause 3.6. An employee can elect the option of having his/her holiday pay paid as a lump sum prior to taking annual leave by giving his/her employer two weeks notice.

### **4.6.5 For all employees**

- (a) All employees shall be entitled to four weeks annual leave in addition to public holidays and additional paid holidays provided for in clause 4.5.2
- (b) Where the employee commences employment with an employer after the beginning of the school year the employer shall, in that first year, pay to the employee, when they take leave at the end of the school year, an amount equal to 8 percent of gross earnings for the period worked for that employer during that school year, less any annual leave payment made in advance by that employer.

- (c) Where an employee's employment terminates before the end of the school year annual leave shall be paid in accordance with the Holidays Act 2003.

**4.6.6 From 1 January 2008 for all employees who have completed five years current continuous service in a state or integrated school**

- (a) Upon completion of five years current continuous service (as defined in clause 4.2) in a state or integrated school employees shall for the sixth and subsequent years be entitled from 1 January 2008 to accrue 4.6 weeks of annual leave in addition to public holidays and the additional paid holidays described in clause 4.5.2.
- (b) Where the employee commences employment with an employer after the beginning of the school year the employer shall pay to the employee an amount equal to 9.2 percent of gross earnings for the period worked for that employer during that school year, less any annual leave payment made in advance by that employer.
- (c) Where an employee's employment is terminated before the end of the school year, annual leave shall be paid in accordance with the Holidays Act 2003, except that holiday pay shall be calculated on the basis of annual leave entitlements provided for in 4.6.6(a) and (b).

**4.6.7 From 1 January 2010 for all employees who have completed ten years current continuous service in a state or integrated school**

- (a) Upon completion of ten years current continuous service (as defined in clause 4.2) in a state or integrated school, each employee bound by this collective agreement shall for the eleventh and subsequent years be entitled from 1 January 2010 to accrue five weeks annual leave in addition to public holidays and the additional paid holidays described in clause 4.5.2, subject to clause 4.6.7 (b) and (c) below.
- (b) Employees entitled to five weeks annual leave under this clause, shall no longer be entitled to the day after Boxing Day (where provided for in the collective agreement) and Easter Tuesday as additional paid holidays (as outlined in clause 4.5.2.). Notwithstanding clause 4.6.1, employees agree to take the day after Boxing Day and Easter Tuesday as paid annual leave days.
- (c) Where the employee commences employment with an employer after the beginning of the school year the employer shall pay an amount equal to 10 percent of gross earnings for the period worked during that school year for that employer less any annual leave payment made in advance by that employer.
- (d) Where an employee's employment is terminated before the end of the school year annual leave shall be paid in accordance with the Holidays Act 2003, except that the holiday pay shall be calculated on the basis of annual leave entitlements provided for in clause 4.6.7(a) and (b).

**4.7 Parental Leave**

**4.7.1** The provisions of the Parental Leave and Employment Protection Act 1987 shall apply. The following provisions are available by way of summary of the Act. Further details are available at [www.ers.dol.govt.nz](http://www.ers.dol.govt.nz) or free phone 0800 800 863.

**4.7.2** This Act provides that on written application an employee shall be entitled to unpaid parental leave provided that:

- (a) the employee has worked for the same employer for 6 months before the expected date of delivery or the date of adoption; and
- (b) the employee has worked at least 10 hours per week during that period.

**4.7.3** Parental leave is:

- (a) maternity leave of up to 14 weeks;
- (b) special leave of up to 10 days;
- (c) paternity leave of up to 2 weeks; and
- (d) extended leave of up to 52 weeks.

**4.7.4** The same leave provisions apply to parents adopting children of not more than 5 years of age.

**4.7.5** Attention is drawn to the employment protection clauses of the Parental Leave and Employment Protection Act.

**4.7.6** The following provision applies to kaiarahi i te reo and ATSSD:

The employee's position shall be held open, subject to any redundancy situation arising at the school or the expiry of the employee's employment agreement, for the duration of the leave.

#### **4.8 Maternity Grant**

The following provisions apply to special education assistants. They also apply to any therapist previously employed under the NZ Support Staff in Schools Composite (Doc 2646) as at 30 August 1992:

- (a) where an employee who is eligible for parental leave of 12 months returns to duty before or at the expiration of the leave and completes a further six months service, she qualifies for a payment equivalent to 30 working days leave on pay;
- (b) an employee who is absent on parental leave for less than six weeks (30 working days) will receive that proportion of the payment provided in 4.8 (a) which her absence represents to 30 working days; and
- (c) an employee who returns to work on a part-time basis qualifies for the payment provided in 4.8 (a) and (b) as appropriate at the end of six months service provided that she was previously employed on a full-time basis.

#### **4.9 Re-entry After Absence Due to Childcare**

**4.9.1** An employee who resigns to care for pre-school children may apply to be re-employed by the employer from whose employment she/he resigned and be appointed to a vacancy with that employer under preferential provisions provided that:

- (a) the absence does not exceed four years from the date of resignation or, five years from the date of cessation of duties to take up parental leave; and
- (b) the applicant must:
  - produce a birth certificate of the pre-school child;
  - sign a statutory declaration indicating that absence has been due to the care of a pre-school child and paid employment has not been entered into for more than 15 hours per week during absence.

**4.9.2** Where the applicant meets all the provisions of 4.9.1 above and, at the time of application:

- (a) has the necessary skills to fill competently, a vacancy which is available; and
- (b) the position is substantially the same in character and at the same or lower salary and grading as the position previously held

then the applicant under these provisions is to be appointed in preference to any other applicant for the position.

**4.9.3** Absence for childcare reasons will interrupt service but not break it. The period of absence will not count as service for the purposes of sick leave or annual leave or any other leave entitlement.

**4.9.4** The period of preferential appointment expires 3 months after the period in 4.9.1(a).

#### **4.10 Jury Service**

The employer will grant leave with pay when an employee is required to serve on a jury provided that all fees for service are reimbursed to the employer.

#### **4.11 Other Special Leave**

The employer may, where there are special circumstances, grant discretionary leave with or without pay to any employee during periods when the school is officially open for instruction, provided that such leave does not unreasonably impinge upon the operational requirements of the school.

Before approving any discretionary leave, the employer shall ensure that the granting of such leave complies with any funding arrangements applying to the school in respect of such leave.

## **PART 5**

### **Expenses and Allowances**

#### **5.1 Motor Vehicle Allowance**

Employees required by their employer to use their own vehicles for school business shall be paid an allowance of 58 cents per kilometre.

#### **5.2 Protective Clothing**

**5.2.1** Where necessary therapists, ATSSD and special education assistants shall be provided with appropriate protective clothing (such as gloves, smocks or overalls). The clothing shall remain the property of the employer.

**5.2.2** Where any employee, in the course of her/his employment is expected to work in swimming pools assisting children with special needs, the employer shall meet the cost of swimwear up to a maximum of \$75 per year upon production of receipts.

#### **5.3 First Aid Allowance**

Where an employee holds a current first aid certificate or recognised nursing qualification and is a designated first aider in the school, such an employee shall be paid an allowance of \$713 per annum provided that this allowance will be paid pro-rata for part-time employees. The employer shall meet the cost (up to a maximum of \$160) of obtaining or reviewing a first aid certificate, from a recognised provider, for a designated first aider.

#### **5.4 Overnight Allowance**

An employee who is required to stay overnight on any school camp or trip shall receive an overnight allowance of \$20 per night.

#### **5.5 Dirty Work Allowance**

**5.5.1** The following provisions shall apply to therapists only.

**5.5.2** Where a therapist is required to clean up a student soiled with vomit, excreta, urine or blood (other than blood associated with minor cuts and abrasions and minor nose bleeds) in the course of her/his duties, s/he shall be paid an allowance of \$3.85 per day or part thereof.

**5.5.3** Where a therapist is required to clean up a student soiled with other forms of body fluids, the allowance shall be payable at the employer's discretion.

**5.5.4** This allowance shall be payable for no more than one attendance to such duties per day.

#### **5.6 Reimbursement of Expenses**

The employer shall pay the actual and reasonable expenses incurred by the employee in carrying out duties required by the employer. This shall include, for example, expenses when the employee has been required to work outside normal working hours and has had to purchase an evening meal, or has incurred costs in the course of official business such as attending staff development courses or school trips as required by the employer.

The employee may be asked to provide receipts to support a claim for expenses.

#### **5.7 Supervision of Therapists**

**5.7.1** A therapist who is permanently employed for 0.7FTE or above and for whom there is a mandatory requirement for supervision for the demonstration of competency shall have the cost of the supervision met by the employer, where costs arise.

**5.7.2** The employer shall, in consultation with the employee, determine whether the supervision can be provided internally or whether external supervision is required.

## **PART 6**

### **Employment Protection and Surplus Staffing Provisions**

#### **6.1 Employment Protection Provision**

'Restructuring' is given the same definition as in section 69OI of the ERA 2000 and includes:

- (i) Contracting out; or
  - (ii) Selling or transferring the employer's business (or part of it) to another person;
- but excludes mergers (in the case of mergers Appendix B will apply).

**6.1.1** Where work undertaken by an employee covered by this Agreement will be, or is likely to be, undertaken by a new employer (whether or not the new employer is an "employer" defined in 1.3) the employer will notify the National Office of the union(s) where one or more of the employees affected by the restructuring is a member of the union(s). In such circumstances the employer will meet with representative(s) of the union(s) to:

- (a) Identify the issues the employee(s) wish to have considered by the new employer;
- (b) Ensure that all current terms and conditions of employment of the employee(s) are accurately recorded; and
- (c) Determine the process by which communications to/from the employee(s) will be conducted.

**6.1.2** The employer will encourage the new employer to agree to the involvement of the union(s) in the processes described in clauses 6.1.3 and 6.1.4 below

**6.1.3** Having completed the process described in 6.1.1 above, the employer will meet with the new employer to:

- (a) provide the new employer with details of the work currently performed by the employees concerned together with details of the terms and conditions of their employment; and
- (b) seek a proposal for the employment of the affected employees by the new employer, including clarification of the terms and conditions upon which those employees would be offered employment by the new employer.

**6.1.4** The following shall be matters for clarification under clause 6.1.3(b) and again should be read in conjunction with the surplus staffing provisions of this collective agreement.

- (a) the number and type of positions that may be offered by the new employer to employees affected by the restructuring;
- (b) the terms and conditions of employment to be offered to those employees (including whether the employees will transfer to the new employer on the same terms and conditions of employment);
- (c) the arrangements, if required, for the transfer of any accrued benefits and entitlements in relation to those employees;
- (d) the arrangements, if required, for when and how offers of employment are to be made to the affected employees and the mode of acceptance, including whether any offers of employment made by the new employer will be conveyed through the representatives of the union(s).

**6.1.5** The notice provisions of the surplus staffing provisions shall apply as described in 6.2.3 and 6.2.4 below.

**6.1.6** The process to be followed at the time of the restructuring to determine what entitlements, if any, are available for employees who do not transfer to the new employer are set out in 6.2 below. This clause as a whole shall be read in conjunction with those provisions.

**6.1.7** Clause 6.1 shall be read in conjunction with clause 6.2.

#### **6.2 Surplus Staffing Provisions**

**6.2.1** The surplus staffing provisions shall not apply to any employee who is employed on a fixed term basis as defined in 2.4. The provisions in relation to staff affected by a merger of 2 or more schools are set out under Appendix C and any provisions in 6.2 will only apply where they are specifically provided for in that Appendix.

**6.2.2** A surplus staffing situation may arise when the work undertaken by the employee ceases to exist. This may be the result of the restructuring of the whole or any part of the employer's operations because of, for example:

- the reorganisation or review of work;
- a change in plant (or like cause) relevant to the individual employees employment; or

- change of status or closure of the school, or the sale or transfer of all or part of the school.

**6.2.3** The employer shall, at least one month prior to issuing notice of termination, advise any affected employee(s) of the possibility of a surplus staffing situation within an occupational category in the school.

**6.2.4** The period of notice is to allow time for discussion between the employer and the employee(s) of the reasons for the possible surplus staffing situation and to determine whether this surplus can be absorbed by attrition. The employer shall consider whether or not it is able to offer an alternative position within the school with terms and conditions that are no less favourable, which may also entail on the job retraining.

**6.2.5** If the required number of positions cannot be achieved through attrition (refer 6.2.4) and a surplus staffing situation still exists, all available positions in the occupational category will be internally advertised and appointments made from existing employees in that category.

Where there is only one position in the identified occupational category in which the surplus exists identification of the position shall be automatic.

**6.2.6** Employees who are not appointed in terms of 6.2.5 above, or who are identified as surplus in terms of 6.2.5 above shall be given a minimum of one month's written notice of termination of employment provided for in 7.10. Except in exceptional circumstances (e.g., long-term sick leave), or as agreed with the employee, this notice shall be given at such a time as to ensure it covers a period of a full month during which the employee is paid and at work.

**6.2.7** During the notice of termination period both the employer and the employee shall make reasonable efforts to locate alternative employment for the employee. The employer will provide reasonable paid time to attend interviews, where prior approval will not be unreasonably withheld.

**6.2.8** In the event that a reasonable offer of employment in the education or state service is made the employer's responsibilities under these provisions shall be fulfilled.

**6.2.9** For the purposes of 6.2.8 a reasonable offer of employment shall constitute an offer of employment that:

- is in the same location or within reasonable commuting distance;
- has comparable duties and responsibilities; and
- has terms and conditions that are no less favourable

providing the employment being offered is available to be taken up by the employee prior to or at the conclusion of the notice of termination period.

**6.2.10** If the offer of employment referred to in 6.2.9 is not a reasonable offer by reason only that it is not available to be taken up by the employee before or at the conclusion of the notice period, the employer may extend the notice period until such time as the position is available to be taken up by the employee; and under these circumstances the offer shall be deemed to be reasonable.

The employer must first ensure that in granting such extended notice that this complies with any funding arrangement applying to the school.

**6.2.11** In the event of a school closure, the employee may be made an offer of employment prior to the disestablishment of the position at another state or integrated school. Where this is an offer of employment to a lower graded position or a position at a lower hourly/salary rate than that previously held, the employee shall be entitled to an equalisation allowance calculated in accordance with Appendix C, clause 8.6. Where this is an offer of employment to a position with reduced hours to that previously held, the employee shall be entitled to a partial redundancy payment calculated in accordance with Appendix C, clause 8.7. Where the employee accepts such an offer the employer of the closing schools' responsibilities under 6.2.12 below shall be fulfilled. Where the employee does not accept such an offer the provisions of 6.2.12 shall apply.

**6.2.12** Except as provided under 6.2.11, above where a reasonable offer of employment is not made before the expiry of the notice of termination period the employee will be entitled to redundancy pay calculated as follows:

- (a) 6 weeks pay for the first year of service and two weeks pay for every subsequent year or part thereof to a maximum of 30 weeks pay in total.

*Note:*

1. This is calculated on current gross weekly earnings as at the last day of service or on average gross weekly earnings over the previous 12 months service whichever is the greater.
2. For the purposes of the redundancy calculation the definition of service for employees other than therapists is the same as that defined in 4.2.3 (a) and (b) provided that no period of service that ended with the employee receiving a redundancy or severance payment shall be counted as service.
3. For the purposes of the redundancy calculation the definition of service for therapists is the same as that defined in 4.1.1 provided that no period of service that ended with the employee receiving a redundancy or severance payment shall be counted as service.
4. An employee with less than one year's service shall receive a pro-rata payment.

(b) All holiday pay and wages owing.

**6.2.13** A work reference or record of service shall be provided on the employee's request.

## **PART 7**

### **Other Conditions**

#### **7.1 Sexual Harassment**

The parties to this agreement agree that sexual harassment in the workplace is not acceptable and attention is drawn to part 8 of this agreement.

#### **7.2 Immunisation**

The parties agree in principle that responsibility for pre-exposure immunisation of employees rests with employers who should accept responsibility for safety in the workplace, advised as necessary by health officials.

#### **7.3 Working Conditions of Employees**

**7.3.1** Attention is drawn to the provisions of the Health and Safety in Employment Act 1992, the Health and Safety in Employment Amendment Act 2002, the Ministry of Education Code of Practice for State Primary, Composite and Secondary Schools 1993 and any amendment or any other relevant legislation or code subsequently introduced.

**7.3.2** All employees shall be provided with coffee, tea, milk and sugar at all meal and tea breaks.

**7.3.3** In situations where employees may be at significantly increased risk of acquiring Hepatitis B because of the nature of their job, the situation shall be assessed by the employer on an individual basis and, if appropriate, the employer shall:

- (a) provide appropriate hygiene measures and educational advice; and
- (b) if appropriate, with the employee's consent, arrange for immunisation at the employer's expense.

#### **7.4 Privacy Act**

Attention is drawn to the Privacy Act 1993 which outlines responsibility for the collection, storage and availability of personal information.

#### **7.5 Access**

A representative of the NZEI shall be entitled to enter at all reasonable times upon the premises for purposes related to the employment of its members or for purposes related to the union's business or both. The representative shall enter at a reasonable time and in a reasonable way and comply with existing safety, health and security procedures applying in respect of the school.

#### **7.6 Deductions**

With the written consent of the employee, the employer shall deduct union fees from the remuneration payable to employees and remit them to NZEI. The employer shall retain an administration fee of 2.5 per cent. The employer shall remit such deductions to the NZEI at mutually accepted intervals of not more than three months.

#### **7.7 Paid Union Meetings**

- (a) The employer must allow every union member employed by the employer to attend at least 2 union meetings (each of a maximum of 2 hours' duration) in each calendar year.
- (b) The union must give the employer at least 14 days' notice of the date and time of any union meeting to be held.
- (c) The union must make such arrangements with the employer as necessary to ensure that the school remains open for instruction during any union meeting, including, where appropriate, an arrangement for sufficient union members to remain available during the meeting to enable the school to remain open for instruction.
- (d) Work must resume as soon as practicable after the meeting, but the employer is not obliged to pay any union member for a period longer than 2 hours in respect of any meeting.
- (e) An employer must allow a union member employed by the employer to attend a union meeting under 7.7 on ordinary pay to the extent that the employee would otherwise be working for the employer during the meeting.
- (f) For the purposes of 7.7 (e) the union must:
  - (i) supply to the employer a list of members who attended the union meeting; and
  - (ii) advise the employer of the duration of the meeting.

#### **7.8 Training**

- 7.8.1 The employer shall consult with employees on training on an annual basis.
- 7.8.2 Employees shall be offered such ongoing training as may be necessary as determined by the employer to ensure they maintain up to date skills and knowledge.
- 7.8.3 At the discretion of and with the prior agreement of the employer, the following may be granted:
  - (a) paid leave to attend training that is directly related to their work;
  - (b) reimbursement of expenses related to training.

**7.9 Professional Development**

- 7.9.1 The parties agree that ongoing professional development is an important component of the provision of quality support services within schools. Further the parties acknowledge that the provision of quality support services is aided by appropriately qualified staff.
- 7.9.2 Both the employer and employee are responsible for discussing and identifying appropriate professional development opportunities. This should occur on at least a 12 monthly basis and where possible be linked to the annual appraisal process.
- 7.9.3 Subject to 7.9.6, a Board may require an employee covered by this agreement to attend professional development opportunities for up to five days in each calendar year. The identification of such opportunities is likely to arise from the process referred to in 7.9.2.
- 7.9.4 The most appropriate opportunities may be in term time or during term breaks, and may be during the employee's normal working hours or outside those hours. When considering such opportunities, the employer will give every reasonable regard to the employee's external responsibilities and commitments.
- 7.9.5 Where an employee considers that s/he is not being provided with an appropriate professional development opportunity through the process referred to in 7.9.2, the employee may apply to the Board of Trustees to have her/his attendance at a particular course approved and reimbursed in accordance with this clause. Such approval will be at the discretion of the Board of Trustees based on the principles expressed in this clause (7.9).
- 7.9.6 Where professional development occurs outside of work hours or on a day not normally worked, the employee shall receive full pay for the time spent at the course, including reasonable travelling time, for a maximum of eight hours per day. In addition the course costs and reasonable expenses shall be met by the Board. A minimum of four weeks notice of any such course will be given to the employee.
- 7.9.7 Where the professional development occurs on a day or days the employee would normally work, the employee will be entitled to have course costs and reasonable expenses paid by the employer in addition to normal wages for the day. Where the course length, including reasonable travelling time, exceeds the hours normally worked on the day, those additional hours shall also be on full pay to a maximum of eight.
- 7.9.8 Where the employer requires the employee to use their own vehicle reasonable expenses shall include mileage payments as per 5.1.

**7.10 Termination of Employment**

Unless otherwise agreed between the employer and the employee, termination of employment shall be by one month's written notice by either the employee or the employer, to the other party; except in cases of serious misconduct which may warrant instant dismissal.

**7.11 Complaints and Discipline**

**7.11.1 General**

The following principles shall be used in addressing complaints against employees and matters of discipline and competence to ensure that such matters can in the interests of the parties be fully and fairly addressed. Many complaints will be able to be resolved by discussion between the principal and the employee concerned without the need to take the matter any further. Boards should, wherever appropriate, seek to resolve complaints in this manner in the first instance. Questions of competence, conduct and/or discipline should be handled in a manner which as far as possible protects the mana and dignity of the employee concerned. Employees may seek whanau, family, professional and/or NZEI support in relation to such matters.

### 7.11.2 Ngā Kōrero me ngā Tikanga

- (a) Me tuku reta atu ki te kaimahi hei whakamārama atu i nga raruraru kua puta noa. Mehemea he pai ki te kaimahi rāua tahi ko tona tumuaki, e āhei ana ki te whakahaere tonutia ngā whakaritenga i raro i ngā tikanga Māori.
- (b) Anei ra ētahi momo tikanga hei kōwhiringa mā rātou:
  - he huihuinga kei te marae;
  - he whakawhiti kōrero kanohi ki te kanohi;
  - ka hui mai te whānau hei tuarā mö te katoa; ā
  - ka hui mai ngā kaumātua kuia hei arahi hei tohutohu i ā rātou katoa.
- (c) Mēnā ka whakaaetia te kaimahi rāua ko tōna tumuaki ö rāua kaihautū rānei, kia oti pai ai te kaupapa, mā rāua mā ngā kaihautu rānei e hainatia ngā whakaaetanga i tūhia. Makaia atu tētahi kape o ngā whakaaetanga nei ki te kōnae o te kaimahi.
- (d) He māmā noa iho ēnei whakawhiringa mehemea hiahia ana tētahi taha kia waiho tārewa ake ngā tikanga Māori kia huri ke ia ki ētahi (te katoa rānei) o ngā whakaritenga, arā 7.11.3, 7.12 me 7.13 e whai ake nei. Engari, mehemea ka huri kē atu i ngā tikanga Māori, ehara tērā i te tino raruraru kia oti hē rawa ngā whakaritenga katoa. Ina hoki ka tahuri mai tētahi taha ki ēnei ki 7.11.3, 7.12 me 7.13 i raro nei, me tuhituhi hei whakamārama ki tērā atu taha.

### 7.11.2 Discussions in a Maori Context

- (a) The employee concerned must be advised in writing of the specific matter(s) causing concern. The employee and employer may, depending on the nature of the complaint, agree to attempt to deal with a complaint by it being heard in a Maori context and manner.
- (b) A Maori context and manner relates to the following:
  - meetings can be held on marae;
  - there is face to face engagement;
  - there can be whanau support for all involved; and
  - guidance and advice is often provided by kaumatua and kuia for all involved.
- (c) Should the employee and employer, or their representatives on their behalf, agree to a resolution of the matter then this shall be recorded in writing and signed by both parties and/or their representatives on their behalf. A copy of the agreement will be placed on the employee's personal file.
- (d) This is a discretionary option and either party may withdraw at any time, and nothing in this section prevents the employer or the employee deciding at any time that any or all of the procedures in 7.11.3, 7.12 and/or 7.13 will be used. Where either party decides to withdraw from this process such a decision will not of itself give rise to any claim of procedural deficiency or unfairness. The decision to withdraw from this process and/or for the employer to use any or all the procedures in 7.11.3, 7.12 and/or 7.13 will be notified in writing to the other party.

### 7.11.3 Discipline and Dismissal

The following principles are to be followed when dealing with disciplinary matters:

- (a) the employee must be advised of the right to request representation at any stage;
- (b) the employee must be advised in writing of the specific matter(s) causing concern and be given a reasonable opportunity to provide an explanation. Before making a final decision the employer may need to make further inquiries in order to be satisfied as to the facts of the specific matter(s) causing concern;
- (c) the employee must be advised of any corrective action required to amend their conduct and given a reasonable opportunity to do so;
- (d) the process and any disciplinary action are to be recorded, sighted and signed by the employee, and placed on their personal file; and
- (e) the provisions in Part 8 explain the processes available under the Employment Relations Act 2000 to an employee who is aggrieved by any action of their employer taken under these provisions.

### 7.12 Suspension

- (a) If the alleged conduct is deemed sufficiently serious an employee may be either suspended with or without pay or transferred temporarily to other duties.
- (b) The employer shall not, unless there are exceptional circumstances, suspend the employee without first allowing the employee a reasonable opportunity to make submissions to the employer about the alleged misconduct and the appropriateness of the suspension in all of the circumstances. The employer shall take into account any submissions made by the employee before determining the matter of suspension.

- (c) The employer shall use its best endeavours to ensure that the period of suspension is kept to the minimum possible time consistent with ensuring that the allegations of misconduct are properly investigated and that the employee is treated fairly at all times.
- (d) If the allegation that led to the suspension is without substance the employee shall be reinstated effective from the date of suspension.

**7.13 Instant Dismissal**

Nothing in 7.11 and 7.12 prevents instant dismissal without notice in the case of serious misconduct.

**7.14 Abandonment of Employment**

Where an employee is absent from work for a continuous period exceeding three days, without the consent of the employer and without good cause or without notification to the employer, they shall be deemed to have terminated their employment.

## **PART 8**

### **Employment Relationship Problems**

#### **What is an employment relationship problem?**

It is a problem between employee and employer. For example, it might be a personal grievance or a dispute about a provision in an employment agreement.

#### **Resolving an employment relationship problem**

The employee and employer should first make a reasonable effort to discuss the problem and settle it by mutual agreement. (If it's a personal grievance, it **must** first be raised with the employer and **within 90 days** - Personal Grievances are explained further below).

An employee (or employer) has the right to be represented at any stage.

When a problem arises, union members should contact their local NZEI Te Riu Roa field officer for advice and representation.

Employers should contact New Zealand School Trustees Association or other adviser/representative of choice.

#### **Personal Grievances**

A personal grievance is a particular type of employment relationship problem that normally must be raised with the employer within 90 days of the grievance arising.

An employee may have a personal grievance where:

- They have been dismissed without good reason, or the dismissal was not carried out properly.
- They have been treated unfairly.
- Their employment or a condition of their employment has been affected to their disadvantage by an unjustified action of their employer.
- They have experienced sexual or racial harassment, or have been discriminated against because of their involvement in a union or other employee organisation, or have suffered duress over membership or non-membership of a union or other employee organisation.
- They have been discriminated against in terms of the prohibited grounds of discrimination under the Human Rights Act 1993.

*Note:* The full meaning of the terms *personal grievance*, *discrimination*, *sexual harassment*, *racial harassment*, and *duress*, shall be the meaning given by sections 103 to 110 inclusive of the Employment Relations Act 2000 only. For ease of access these are attached at the end of this agreement as Appendix B.

As with other employment relationship problems, the parties should always try to resolve a personal grievance through discussion.

Either party can refer a personal grievance to the Employment Relations Service of the Department of Labour for mediation assistance, or to the Employment Relations Authority.

If the problem relates to a type of discrimination that can be the subject of a complaint to the Human Rights Commission under the Human Rights Act 1993, the person can either take a personal grievance, or complain to the Human Rights Commission, but not both. If in doubt, advice should be sought before deciding.

#### **Services Available**

To help resolve employment relationship problems, the Department of Labour provides:

- ***An information service***  
This is free. It is available by contacting the Department of Labour or by phoning toll free 0800 20 90 20. The Department's Employment Relations Service internet address is [www.ers.dol.govt.nz](http://www.ers.dol.govt.nz) and can be contacted by e-mail at [info@ers.dol.govt.nz](mailto:info@ers.dol.govt.nz).

- ***Mediation Service***

The Mediation Service is a free and independent service available through the Department of Labour.

This service helps to resolve employment relationship problems and generally to promote the smooth conduct of employment relationships.

Mediation is a mutual problem solving process, with the aim of reaching an agreement, assisted by an independent third party.

If the parties can't reach a settlement they can ask the mediator, in writing, to make a final and binding decision.

A settlement reached through mediation and signed by the mediator at the request of the parties is final, binding and enforceable. Neither party can then take the matter any further and, either party can be made to comply with the agreed settlement by court order.

If the problem is unresolved through mediation either party may apply to have the matter dealt with by the Employment Relations Authority.

- ***The Employment Relations Authority***

This Authority is an investigative body that operates in an informal way. It looks into the facts and makes a decision on the merits of the case and not on the legal technicalities.

Either an employer or an employee can refer an unresolved employment relationship problem to the Authority by filing the appropriate forms.

The Authority may call evidence, hold investigative meetings, or interview anyone involved. It can direct the parties to try mediation. If mediation is unsuitable or has not resolved the problem, the Authority will make a decision that is binding on all parties. Any party can contest the Authority's decision through the Employment Court.

*Note:* All employment relationship problems, including personal grievances and any disputes about the interpretation or application of this agreement, must be resolved under Parts 9 and 10 of the Employment Relations Act 2000.

## **Signatories**

This agreement has been signed by the parties on the            day of April 2010

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for NZEI - Te Riu Roa

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for the Secretary for Education

## **Memorandum of Understanding**

### **1. Retirement Savings Scheme**

The government has announced a state sector retirement savings scheme, which will be available to employees in state and integrated schools who are bound by this collective agreement. This scheme includes a government contribution.

This scheme is an expression of the government's commitment to promoting retirement saving among employees and will help ensure better living standards for those members of the scheme in their retirement years.

### **2. Renewal of the Collective Agreement**

The parties further agree that substantive bargaining for succeeding agreements will proceed in a timely manner, which will afford the opportunity for negotiations to be concluded before the expiry of this document.

### **3. Joint Good Practice Guidelines**

The NZEI Te Riu Roa and the New Zealand School Trustees Association have undertaken to jointly develop and distribute good practice guidelines on the following matters, namely:

- Job descriptions and appraisal processes
- Administration of medication and medical processes (e.g. catheterisation)
- Safe practise
- Professional development leave
- Lifting (manual handling)
- Recognition of service

## LIST OF QUALIFICATIONS

NZQA QUALIFICATIONS	PROVIDER
<b>Group One</b>	<b>Key at end of list</b>
<p><b>Level 4 National Certificate in:</b>  National Certificate in Youth Work  National Certificate in Mental Health (Mental Health Support Work)  National Certificate in Human Services  National Certificate in Social Services  National Certificate in Pacific Island Social Services  National Certificate in Iwi/Maori Social Services  National Certificate in Community Recreation  National Certificate in Reo Maori  National Certificate in Hauora (Maori Community Health)  National Certificate in Maori Performing Arts  National Certificate in Nga Mahi a te Whare Pora  National Certificate in Whakairo  National Certificate in Computing  Certificate in Teacher Aides  Certificate in Support Services in Schools  Certificate in Educational Support (Special Needs)  Certificate in Teacher Aide Skills  Certificate in Teacher Aiding  Certificate in Education Support  Certificate in Educational Support (Disability Studies)  Teacher Aide Certificate  Higher Certificate for Teacher Aides  Certificate in Disabilities Support  Certificate in Teaching People with Disabilities  Advanced Care Tech Certificate  Certificate in Counselling  Certificate in Community Skills/Work  Certificate in Community and Social Work  Certificate in Social Work (Activities-based)  Certificate in Teaching English as an Additional Language  Certificate in Te Taura o te Reo - Te Ataarangi (97)  Certificate in Te Rakeitanga o te Reo - Te Ataarangi (98)  Certificate in Supporting Children's Learning (2003)  Certificate in Education Support  Certificate of<sup>1</sup> Proficiency - Training of the intellectually handicapped (86)  Certificate in Tertiary Teaching  Certificate in Special Needs Education  Te Tohu o te Kohanga Reo  Advanced Certificate for Science Laboratory Technicians  Teacher Aide Certificate  Youth Pastor Certificate  Mai te Pakiaka ki te Tupuranga He Tohu Rangatira mo  Statement of Attainment in Community Skills  Introduction to Nursing  Pre-degree Nursing  Health Care Assistance  Introduction to Health and Childcare  Foundation Certificate for Nursing and Health Science  Te Mahi Whakawhaungatanga  Social Services - Kaupapa Tangata Whenua  Te Toku Ratonga Hapori  Certificate in Maori Studies  Certificate of Achievement Te Kopae</p>	<p>MASSEY  ACE  MIT  CASE BOREHAM  SIT, CPIT  WINTEC  DCE  TOPNZ  MASSEY  WITT  CPIT, NMIT, TWP  EIT  NMIT  UNITEC, BOPP  WAIA' IT, UNITEC  UNITEC  MASSEY  TWP  TWP  CCE  TWP  Department of Health  AUT  CCE  Te Kohanga Reo National Trust  City and Guilds of London  PNCE, TOPNZ, RTC  Baptist Union of NZ  DCE  CPIT  AUT  NMIT  BOPP  SIT  TAIRAWHITI, EIT  MIT  OTAGO POLY  MIT  WAIA' IT, UNITEC  WANG POLY</p>

<p>Te Rangi Tuu Kaha  Te Reo Rangatira  Te Tohu Mutunga Kore  Te Huanui  Te Ataarangi - Te Mana me te Weehi  Diploma in Maori Studies  Te Pokaitahi Nga Puhi Nui Tonu  Tiwhikete te Reo Whiri  Te Reo me Ona Tikanga  Poutama  Rangatahi Hauora  Te Timatanga Hou  Certificate in Business Computing  Certificate in Computing  Advanced Computer Users Certificate  Certificate in Translation Studies  Certificate in Applied Arts  Certificate in Teacher Aiding  Braille Proficiency Certificate  Certificate in Adult Learning and Teaching (CALT)  Enrolled Nurse Certificate  Registered Community Nurse  Certificate of Dental Nursing  Certificate of Counselling (Te Whiuwhiu o te Hau)</p>	<p>WANG POLY  UCOL, TWP  WHITI' CP  CPIT  CPIT  WITT  NP  UCOL  SIT  WHITI' CP  TWP  UNI OF WAIKATO  WAIA' IT  NP  UCOL  AUT  OTAGO POLY  Training for You Wanganui</p>
<p><b><u>Level 5 National Diploma/Certificate in:</u></b>  National Certificate in Hauora (Maori Community Health)  National Certificate in Whakairo  National Certificate in Social Work  Certificate in Business Computing (CBC)  Advanced Certificate in Business Computing (ACBC)  Certificate in Business Computing  Certificate in Information systems  Certificate in Computer Support  Certificate in Maori Studies  Te Tohu Pokairua - Maori Studies  Te Ao Maori  Te Toho Paetahi  Te Pukenga Teacher Aide Certificate (Maori Immersion)  Certificate in Applied Counselling Skills  Certificate in Community Counselling  Certificate in Arts  Certificate in Social and Community Work  Certificate in Rehabilitation Studies  Certificate in Applied Science  Certificate in Behaviour and Learning Support (previously Cert in Special Needs Support)  Diploma in Teaching People with Disabilities  Diploma in Social Practice  Diploma in Social and Community Work  Nga Ratonga Hapori - Tukupu  Diploma in Health and Human Development  Diploma in Health and Human Behaviour  Diploma in Human Services  Certificate of Education Support  Diploma in Maori and Administration  Diploma in NZ Policing  NZNNC (NZ Nanny Certificate)  Diploma in Early Childhood Group Education and Care  Certificate in Childcare (NZCA)</p>	<p>MIT  NP  UCOL  WAIA' IT, UNI OF WAIKATO  CPIT  OTAGO POLY  BOPP  ANAMATA  UCOL  WIT (<i>formerly CIT</i>)  MASSEY  MASSEY  MASSEY  MASSEY  CCE  UCOL, WAIA' IT, CPIT, ACE, WCE  BOPP  MIT  MIT  WIT (<i>formerly HVP</i>)  TOPNZ  ACE  TE WANANGA O RAUKAWA  RANGI RURU</p>
<p><b>Group Two</b></p>	

<p><b><u>Level 6 National Diploma in:</u></b>  National Diploma in Whakairo  National Diploma in Nga Mahi te Whare Pora  National Diploma in Reo Maori  National Diploma in Youth Work  National Diploma in Social Services  National Diploma in Iwi/Maori Studies  Diploma in Comprehensive Nursing (also RCpN)  Registered General Nurse (RGN)  Registered General and Obstetric Nurse (RGON)  Certificate in Computer Networks  Certified Network Associate CCNA  Maori Fine Arts (Weaving)  Te Reo me nga Tikanga  Te Reo Rangatira  Te Whiuwhiu o te Hau (Maori Counselling)  Nga Ratonga Hapori – Whakaturuma  Certificate in Social Work  Certificate in Applied Social Research  Advanced Certificate in Addiction Studies  Certificate in Deaf Studies - Teaching (NZSL)  Sign Language Interpreting  Advanced Certificate in Autism and Severe Communication Disorders  Certificate in Language Teaching to Adults  Certificate in Reading Studies  Certificate in Technology Information  Certificate in Managing Learning and Behaviour  Advanced Certificate in Community Services (Disabilities)  Te Pokaitahi Nga Puhī Nui Tōnu (Diploma)  Tohu Maoritanga  Diploma in Child and Adolescence Guidance Counselling  Diploma in Counselling  Diploma in Career Counselling  Diploma in Social and Community Work  Diploma in Health Science  Diploma in Applied Mental Health  Registered Psychiatric Nurse  National Diploma in Children's Literature  Diploma in Applied Arts  Registered Psychopaedic Nurse</p>	<p>UCOL  UCOL  UNITEC  UNITEC  TWP  TWP  MIT  ACE  ACE  MIT  VUW  AUT  CCE  AUT  CCE  CCE  CCE  CCE  CCE  NP  VUW  WIT (<i>formerly CIT</i>)  MIT, UCOL  WIT (<i>formerly CIT</i>)  MIT  UCOL  TOPNZ    CCE  NP</p>
<p><b>Group Three</b></p>	
<p>All qualifications registered on NZQF at levels 7-8  All NZ degrees and NZQA assessed equivalents  All graduate certificates  All graduate diplomas  All post-graduate certificates  All post-graduate diplomas  All Registered Teachers and those eligible for Registration  Ministry of Education verified He Tohu Matauranga  NZIM Advanced Diploma in Management  NZIM Higher Diploma in Management</p>	

This list is updated by NZEI Te Riu Roa and Ministry of Education and is available at any time at [www.minedu.govt.nz](http://www.minedu.govt.nz) and [www.nzei.org.nz](http://www.nzei.org.nz)

## Key to Abbreviations of Training Providers

Abbreviation	Full name of Polytechnic, Institute or University
<b>TOPNZ</b>	The Open Polytechnic of New Zealand
<b>WIT</b>	Wellington Institute of Technology ( <i>formerly Central Institute of Technology (CIT) and Hutt Valley Polytechnic (HVP) now combined</i> )
<b>WAIA' IT</b>	Wairiki Institute of Technology
<b>CPIT</b>	Christchurch Polytechnic Institute of Technology
<b>WITT</b>	Western Institute of Technology of Taranaki ( <i>formerly Taranaki Polytechnic</i> )
<b>WINTEC</b>	Waikato Institute of Technology ( <i>formerly Waikato Polytechnic</i> )
<b>NP</b>	Northland Polytechnic
<b>UCOL</b>	Universal College of Learning ( <i>of Palmerston North</i> )
<b>TWP</b>	The Waikato Polytechnic
<b>MIT</b>	Manukau Institute of Technology
<b>UNITEC</b>	Unitec Institute of Technology
<b>PNCE</b>	Palmerston North College of Education
<b>RTC</b>	Regent Training Centre
<b>SIT</b>	Southern Institute of Technology
<b>EIT</b>	Eastern Institute of Technology
<b>AUT</b>	Auckland University of Technology
<b>TAIRAWHITI</b>	Tairāwhiti Polytechnic
<b>NMIT</b>	Nelson-Marlborough Institute of Technology
<b>MASSEY</b>	Massey University
<b>ACE</b>	Auckland College of Education
<b>WANG POLY</b>	Wanganui Polytechnic
<b>UNI OF WAIKATO</b>	University of Waikato
<b>OTAGO POLY</b>	Otago Polytechnic
<b>BOPP</b>	Bay of Plenty Polytechnic
<b>DCE</b>	Dunedin College of Education
<b>WCE</b>	Wellington College of Education
<b>VUW</b>	Victoria University of Wellington
<b>CCE</b>	Christchurch College of Education
<b>WHITI' CP</b>	Whitireia Polytechnic
<b>TE WANANGA O RAUKAWA</b>	Te Whare Wananga o Raukawa
<b>OTAGO UNI</b>	Otago University
<b>RANGI RURU</b>	Rangi Ruru College
<b>CASE BOREHAM</b>	Case Boreham Assoc. ( <i>of Whakatane</i> )

General education websites for internet addresses of polytechnics, institutes and universities:

[www.cwa.co.nz/eduweb/edu/nzed.html](http://www.cwa.co.nz/eduweb/edu/nzed.html)

[www.piperpat.co.nz/nz/educ/](http://www.piperpat.co.nz/nz/educ/)

**Extract From Employment Relations Act 2000****103 PERSONAL GRIEVANCE--**

- (1) For the purposes of this Act, "personal grievance" means any grievance that an employee may have against the employee's employer or former employer because of a claim--
- (a) that the employee has been unjustifiably dismissed; or
  - (b) that the employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer; or
  - (c) that the employee has been discriminated against in the employee's employment; or
  - (d) that the employee has been sexually harassed in the employee's employment; or
  - (e) that the employee has been racially harassed in the employee's employment; or
  - (f) that the employee has been subject to duress in the employee's employment in relation to membership or non-membership of a union or employees organisation.
- (2) For the purposes of this Part, a "representative", in relation to an employer and in relation to an alleged personal grievance, means a person--
- (a) who is employed by that employer; and
  - (b) who either--
    - (i) has authority over the employee alleging the grievance; or
    - (ii) is in a position of authority over other employees in the workplace of the employee alleging the grievance.
- (3) In subsection (1)(b), unjustifiable action by the employer does not include an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment agreement.

**103A TEST OF JUSTIFICATION**

For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred

**104 DISCRIMINATION--**

- (1) For the purposes of section 103(1)(c), an employee is discriminated against in that employee's employment if the employee's employer or a representative of that employer, by reason directly or indirectly of any of the prohibited grounds of discrimination specified in section 105, or by reason directly or indirectly of that employee's involvement in the activities of a union in terms of section 107,--
- (a) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - (b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or
  - (c) retires that employee, or requires or causes that employee to retire or resign.
- (2) For the purposes of this section, "detriment" includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction.
- (3) This section is subject to the exceptions set out in section 106.

**105 PROHIBITED GROUNDS OF DISCRIMINATION FOR PURPOSES OF SECTION 104--**

- (1) The prohibited grounds of discrimination referred to in section 104 are the prohibited grounds of discrimination set out in section 21(1) of the Human Rights Act 1993, namely--
- (a) sex:
  - (b) marital status:
  - (c) religious belief:
  - (d) ethical belief:
  - (e) colour:
  - (f) race:
  - (g) ethnic or national origins:
  - (h) disability:
  - (i) age:
  - (j) political opinion:
  - (k) employment status:
  - (l) family status:
  - (m) sexual orientation.
- (2) The items listed in subsection (1) have the meanings (if any) given to them by section 21(1) of the Human Rights Act 1993.

**106 EXCEPTIONS IN RELATION TO DISCRIMINATION--**

- (1) Section 104 must be read subject to the following provisions of the Human Rights Act 1993 dealing with exceptions in relation to employment matters:
- (a) section 24 (which provides for an exception in relation to crews of ships and aircraft):
  - (b) section 25 (which provides for an exception in relation to work involving national security):
  - (c) section 26 (which provides for an exception in relation to work performed outside New Zealand):
  - (d) section 27 (which provides for exceptions in relation to authenticity and privacy):
  - (e) section 28 (which provides for exceptions for purposes of religion):
  - (f) section 29 (which provides for exceptions in relation to disability):
  - (g) section 30 (which provides for exceptions in relation to age):
  - (h) section 31 (which provides for an exception in relation to employment of a political nature):
  - (i) section 32 (which provides for an exception in relation to family status):
  - (j) section 33 (which relates to the Armed Forces):
  - (k) section 34 (which relates to regular forces and Police):
  - (l) section 35 (which provides a general qualification on exceptions).
- (2) For the purposes of subsection (1), sections 24 to 35 of the Human Rights Act 1993 must be read as if they referred to section 104 of this Act, rather than to section 22 of that Act. In particular,--
- (a) references in sections 24 to 29, 31, 32, and 33 of that Act to section 22 of that Act must be read as if they were references to section 104(1) of this Act; and
  - (b) references in section 30 or section 34 of that Act--
    - (i) to section 22(1)(a) or 22(1)(b) of that Act must be read as if they were references to section 104(1)(a) of this Act; and
    - (ii) to section 22(1)(c) of that Act must be read as if they were references to section 104(1)(b) of this Act; and
    - (iii) to section 22(1)(d) of that Act must be read as if they were references to section 104(1)(c) of this Act.
- (3) Nothing in section 104 includes as discrimination--
- (a) anything done or omitted for any of the reasons set out in paragraph (a) or paragraph (b) of section 73(1) of the Human Rights Act 1993 (which relate to measures to ensure equality); or
  - (b) preferential treatment granted by reason of any of the reasons set out in paragraph (a) or paragraph (b) of section 74 of the Human Rights Act 1993 (which relate to pregnancy, childbirth, or family responsibilities); or
  - (c) retiring an employee or requiring or causing an employee to retire at a particular age that has effect by virtue of section 149(2) of the Human Rights Act 1993 (which is a savings provision in relation to retirement ages specified in certain employment contracts).

**107 DEFINITION OF INVOLVEMENT IN ACTIVITIES OF UNION FOR PURPOSES OF SECTION 104--**

For the purposes of section 104, "involvement in the activities of a union" means that, within 12 months before the action complained of, the employee--

- (a) was an officer of a union or part of a union, or was a member of the committee of management of a union or part of a union, or was otherwise an official or representative of a union or part of a union; or
- (b) had acted as a negotiator or representative of employees in collective bargaining; or
- (c) was involved in the formation or the proposed formation of a union; or
- (d) had made or caused to be made a claim for some benefit of an employment agreement either for that employee or any other employee, or had supported any such claim, whether by giving evidence or otherwise; or
- (e) had submitted another personal grievance to that employee's employer; or
- (f) had been allocated, had applied to take, or had taken any employment relations education leave under this Act; or
- (g) was a delegate of other employees in dealing with the employer on matters relating to the employment of those employees.

**108 SEXUAL HARASSMENT--**

(1) For the purposes of sections 103(1)(d) and 123(d), an employee is sexually harassed in that employee's employment if that employee's employer or a representative of that employer--

- (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity that contains--
  - (i) an implied or overt promise of preferential treatment in that employee's employment; or
  - (ii) an implied or overt threat of detrimental treatment in that employee's employment; or
  - (iii) an implied or overt threat about the present or future employment status of that employee; or
- (b) by--
  - (i) the use of language (whether written or spoken) of a sexual nature; or
  - (ii) the use of visual material of a sexual nature; or
  - (iii) physical behaviour of a sexual nature,--

directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

(2) For the purposes of sections 103(1)(d) and 123(d), an employee is also sexually harassed in that employee's employment (whether by a co-employee or by a client or customer of the employer), if the circumstances described in section 117 have occurred.

**109 RACIAL HARASSMENT--**

For the purposes of sections 103(1)(e) and 123(d), an employee is racially harassed in the employee's employment if the employee's employer or a representative of that employer uses language (whether written or spoken), or visual material, or physical behaviour that directly or indirectly--

- (a) expresses hostility against, or brings into contempt or ridicule, the employee on the ground of the race, colour, or ethnic or national origins of the employee; and
- (b) is hurtful or offensive to the employee (whether or not that is conveyed to the employer or representative); and
- (c) has, either by its nature or through repetition, a detrimental effect on the employee's employment, job performance, or job satisfaction.

**110 DURESS--**

(1) For the purposes of section 103(1)(f), an employee is subject to duress in that employee's employment in relation to membership or non-membership of a union or employees organisation if that employee's employer or a representative of that employer directly or indirectly--

- (a) makes membership of a union or employees organisation or of a particular union or employees organisation a condition to be fulfilled if that employee wishes to retain that employee's employment; or
- (b) makes non-membership of a union or employees organisation or of a particular union or employees organisation a condition to be fulfilled if that employee wishes to retain that employee's employment; or
- (c) exerts undue influence on that employee, or offers, or threatens to withhold or does withhold, any incentive or advantage to or from that employee, or threatens to or does impose any disadvantage on that employee, with intent to induce that employee
  - (i) to become or remain a member of a union or employees organisation or a particular union or employees organisation; or

- (ii) to cease to be a member of a union or employees organisation or a particular union or employees organisation; or
  - (iii) not to become a member of a union or employees organisation or a particular union or employees organisation; or
  - (iv) in the case of an employee who is authorised to act on behalf of employees, not to act on their behalf or to cease to act on their behalf; or
  - (v) on account of the fact that the employee is, or, as the case may be, is not, a member of a union or employees organisation or of a particular union or employees organisation, to resign from or leave any employment; or
  - (vi) to participate in the formation of a union or employees organisation; or
  - (vii) not to participate in the formation of a union or employees organisation.
- (2) In this section and in section 103(1)(f), "employees organisation" means any group, society, association, or other collection of employees other than a union, however described and whether incorporated or not, that exists in whole or in part to further the employment interests of the employees belonging to it.

## Staffing Merger

(Note: Any reference to “support staff” in this appendix means a kaiarahi i te reo, an ATSSD, a special education assistant or a therapist)

### 1 Purpose/Definitions

1.1 The purposes of these provisions are to:

- (a) Provide a staffing merger process that facilitates a fair and orderly transition;
- (b) Ensure an appropriate structure is in place to enable the merged school to function efficiently and effectively;
- (c) Ensure that as many employees as possible currently employed in a merging school are re-assigned or re-confirmed to positions in the merged school;
- (d) Ensure that employees of the merging schools who are not reconfirmed or reassigned to positions in the merged school have access to redundancy compensation in a fair and timely manner.

1.2 “Merging schools” includes the merging school(s) and the continuing school before the date of merger; and “merged school” is the continuing school from the date of merger.

1.3 “Employee” shall mean a permanent employee of one of the merging school who falls within the coverage clause of the collective agreement.

### 2 Employment Protection

2.1 Actual vacancies that arise at the schools involved in a merger or the merged school, from the earlier of the announcement of a staff review or Gazette notices shall be filled with temporary appointments. However, if operational needs require, the employer may determine, in consultation with the union, that any such position may be made permanent. This moratorium applies until the completion of the reconfirmation/reassignment process and notice period, except as provided elsewhere in this Appendix.

2.2 Throughout the staffing merger process the employer shall attempt to meet any reduction required by the use of attrition.

2.3 Throughout the staffing merger process no support staff position at the merged school shall be externally advertised until the reconfirmation and reassignment processes described in subclauses 7 and 8 below have been finalised

### 3 Needs Analysis

3.1 The needs analysis is the process that designs the staffing structure for the merged school. This process will be conducted by representatives of all the boards involved in the merger (the joint schools’ committee or merger committee).

3.2 This committee shall conduct a needs analysis in consultation with employees and the union.

3.3 The needs analysis shall

- Identify the future support staff structure and needs of the merged school; and
- Ensure that the required staff roles have been clearly defined in terms of occupational category and appropriate grade

3.4 As a result of the consultation process, a draft ‘staffing plan’ shall be developed and made available to each employee, and to the nominee(s) of the NZEI, for further consultation.

3.5 No less than **ten** working days shall be made available for this consultation to occur before any further step is taken, unless otherwise agreed.

(Note: the parties agree that it is desirable to have the same number of days as the teachers in the affected school.)

**3.6** If, as a result of consultation, there are alterations to this draft, the amended versions shall also be made available for a further **three** working days.

**3.7** When the final staffing structure is announced, the employer shall invite all employees to express a preference (or preferences) in writing, for a position (or positions) at the merged school. Where this announcement identifies the possibility of a position or positions being disestablished, any affected employee(s) shall be given one month's written notice of a possible surplus staffing situation within her/his occupational category in the school. This period of notice must be allowed before notice of termination, as described in subclause 9.1 of this clause, may be given.

**3.8** Employees shall have at least **one** calendar week's notice of the closing date for expressions of interest in the position(s) at the merged school

#### **4 The Appointments Process**

**4.1** The boards involved in the merger may agree on a Joint Appointments Committee or use the committee referred to in 3.1 above (hereafter referred to as the Committee). The Committee should be responsible for managing the reconfirmation and reassignment process for all staff.

**4.2** The principal of the merged school, once appointed, should be included on the Committee.

#### **5 Voluntary Option**

**5.1** Following the publication of the final staffing structure, the employer board shall invite written expressions of interest in the option of voluntary redundancy. Subject to the employee completing the required period of notice (two months, or less by mutual agreement) an employee whose application for voluntary redundancy is accepted shall receive her/his full entitlement to redundancy pay as prescribed by clause 6.2.12 (surplus staffing) of the collective agreement.

**5.2** An employee may continue to volunteer for this option without prejudice or withdraw from it at any point in the staffing merger process, providing the employer has not already accepted the application in writing. No letter of acceptance will be issued without the agreement of the Committee.

**5.3** The employer shall not be bound to agree to any application for voluntary redundancy.

#### **6 Appointment/Selection Process**

**6.1** For the purpose of the clauses below:

- (a) 'Reconfirmation' shall mean the process whereby employees are transferred to suitable positions at the re-organised school. A suitable position is one which has similar duties and/or for which the applicant is appropriately qualified and experienced or could become so with reasonable access to re-training. The new position shall have the same or a higher grading.
- (b) 'Reassignment' shall mean the process that applies to functionally-equivalent positions.
- (c) 'Functionally-equivalent' shall mean positions which are generally similar in role, duties and status and which require similar qualifications, training, skills and experience but may have different titles.
- (d) Merit means the most suitable person and primarily includes assessment of qualifications, training, skills and experience.

#### **7 Reconfirmation**

**7.1** The employer shall reconfirm (as defined in clause 6.1(a) above) employees to suitable positions at the merged school.

**7.2** An employee may be reconfirmed to her/his preferred position or, subject to her/his agreement, to a position for which s/he is appropriately qualified and experienced.

**7.3** Where there are two or more employees eligible for re-confirmation to a single position, the employer shall reconfirm the most suitable candidate(s) based on merit

**7.4** Where a permanent employee is reconfirmed, this must be into a position of at least the same hours. Provided that where an employee accepts redeployment to a position with reduced hours in a situation

where a position with at least the same hours is not available, that employee will be entitled to a partial redundancy payment.

- 7.5 Partial redundancy will be calculated on the basis of applying the redundancy pay formula described in clause 6.2.12 (Surplus Staffing) of this agreement to the total number of reduced hours as set out under clause 2.4 (Hours of Work) of the collective agreement. This total shall be paid as an allowance over the number of weeks of entitlement. Should the employee's hours increase over this period the allowance will be reduced or removed accordingly.

## **8 Re-assignment to Functionally Equivalent Positions**

- 8.1 Following completion of the reconfirmation process, the employer may reassign an employee, who has not been reconfirmed in accordance with clause 7, to a suitable position at the merged school.
- 8.2 Subject to the provisions in this section, if an employee expresses a preference for a position that is functionally equivalent (as defined under 6.1(c) above) to her/his current position, and s/he is the only suitably qualified and experienced employee for that position, s/he shall be reassigned to that position.
- 8.3 An employee may be reassigned to her/his preferred position or, subject to the agreement of the employee, to a position for which s/he is appropriately qualified and experienced.
- 8.4 Where there are more employees in positions that are functionally equivalent than there are such positions at the merged school, the employer shall seek internal applications for the position(s) from those employees and shall appoint the most suitable candidate(s) based upon merit.
- 8.5 An employee who is not appointed to a functionally equivalent position at the merged school may be reassigned to any vacant position for which s/he is suitable, or could become suitable with access to re-training, provided the terms and conditions are no less favourable and the duties and responsibilities are comparable.
- 8.6 An employee who accepts reassignment to a position assessed as being at a lower grade and/or offering a lower hourly rate/salary rate will be entitled to an equalization allowance for a period of one year from the date on which the reassignment takes effect. The equalization allowance will be calculated on the basis of the difference between the hourly rate paid to the employee prior to reassignment and that paid for the position to which s/he has been reassigned. Should the position be upgraded, or a higher graded position obtained during the 12 month period, the allowance would be reduced accordingly or removed.
- 8.7 An employee who accepts reassignment to a position with reduced hours will be entitled to a partial redundancy payment. Partial redundancy will be calculated on the basis of applying the redundancy pay formula described in clause 6.2.12 (Surplus Staffing) of this agreement to the total number of reduced hours, as set under clause 2.5 or 2.6 (Hours of Work) of the collective agreement. This total shall be paid as a allowance over the number of weeks of entitlement. Should the employees hours increase over this period it will be reduced or removed accordingly.
- 8.8 An employee who does not wish to accept reassignment to a position with less favourable terms and/or conditions will be deemed to have had her/his position disestablished. The provisions of clause 9 below will apply to any such employee.

## **9 Notice and Disestablishment of Positions**

- 9.1 Any employee who is not reconfirmed or reassigned as per clause 7 and 8 above will be deemed to have had their position disestablished and will be given written notice of termination advising of the date that the notice will take effect. This notice period will be a minimum of one month.
- 9.2 If, during the two-month notice period, a suitable permanent position arises at the merged school the employee may seek appointment to that position and, if s/he is suitably qualified and experienced, s/he shall be appointed to that position.
- 9.3 During the notice period the employer will provide reasonable paid time for the employee to attend interviews.
- 9.4 Clause 6.2.7 – 6.2.10 (Surplus Staffing) shall apply in relation to the notice period. These provisions emphasize the responsibilities in relation to securing alternative employment on the employer and

employee. Where a reasonable offer of employment, as defined, is made in the education or state service, the employer has no further obligation in relation to redundancy payments. Scope exists to co-ordinate the notice period and availability of the new position.

- 9.5** If at the completion of the notice period alternative employment is not found in accordance with section, or clauses 6.2.7 and 6.2.8 (Surplus Staffing) of this agreement, the employee will receive redundancy and a work reference or record of service in accordance with clauses 6.2.12 and 6.2.13 of this agreement.