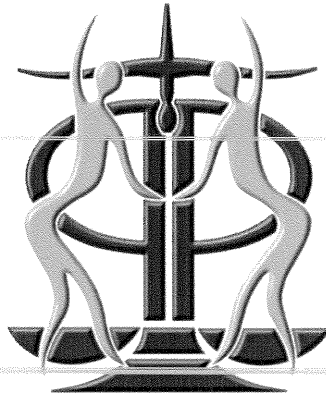


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION  
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH  
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT,  
1994**

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**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO. 19 OF 2009/10**

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE  
MPUMALANGA PROVINCIAL DEPARTMENT OF EDUCATION IMPROPERLY  
SUSPENDED THE SALARY OF AN EDUCATOR**

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## Executive Summary

- (i) This report deals with an investigation into an allegation that the Mpumalanga Provincial Department of Education (Department) improperly suspended Ms J M Mofokeng's salary while she was on sick leave and had submitted all the required medical certificates.
- (ii) From the investigation it was found that:
- (a) The Complainant failed to submit medical certificates since January 2007 and this led to her salary being suspended;
  - (b) On 6 July 2007 the Complainant met with Mr Maja and apologised for not submitting medical certificates which she subsequently submitted;
  - (c) The report from the Department's Labour Relations Division to the Wellness Office stated that the Complainant returned to service, hence Ms Mahlangu was under the impression that payment of the Complainant's salary would be re-instated;
  - (d) From 6 July 2007 when Mr Maja advised the Complainant to stay at home whilst investigations were underway, the Labour Relations Division failed to inform the Complainant or the Wellness Division about the outcome of its investigation and her transfer;
  - (e) There was poor coordination between the Department's Labour Relations Division and the Wellness Office;
  - (f) The Department agreed to reinstate payment of the Complainant's salary with effect from the end of October 2008 and transfer her to a school in the Delmas Circuit; and

- (g) The Department transferred the Complainant, but failed to pay her October 2008 salary.
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(iii) It was recommended that the Department should:

(a) Pay the Complainant her salary for the month of October 2008 as per the Department's undertaking; and

(b) Ensure better coordination between the Department's Labour Division and Wellness Division to ensure that the Employee Wellness Programme benefits the employees.

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## **REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE MPUMALANGA PROVINCIAL DEPARTMENT OF EDUCATION IMPROPERLY SUSPENDED THE SALARY OF AN EDUCATOR**

### **1. INTRODUCTION**

- 1.1 This report is submitted to the Member of the Executive Council responsible for Education in the Mpumalanga Provincial Government and the Head of the Mpumalanga Provincial Department of Education in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994.
- 1.2 It deals with an investigation into an allegation that the Mpumalanga Provincial Department of Education (Department) suspended Ms J M Mofokeng's salary while she was on sick leave and had submitted all relevant documents.

### **2. THE COMPLAINT**

- 2.1 The investigation was the result of a complaint lodged with the Office of the Public Protector by Ms Mofokeng (the Complainant), an educator stationed at Vezubuhle Secondary School in the KwaMhlanga Circuit on 7 March 2008.
- 2.2 The Complainant alleged that the Department suspended her salary despite having been advised to take time off and seek professional medical assistance by the Department's Wellness Office.
- 2.3 The Complainant had allegedly submitted all relevant documents indicating that she needed to stay at home and be transferred to a school closer to her home.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

3.1 The Office of the Public Protector was established in terms of Chapter 9 of the Constitution as one of a number of institutions that support constitutional democracy. The operational requirements of the Office of the Public Protector are provided for by the Public Protector Act, 1994.

3.2 Section 6(4) of the Public Protector Act, 1994 empowers the Public Protector to investigate, among other things, any act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

3.3 The findings of an investigation by the Public Protector may, when he/she deems it fit but as soon as possible, be made available to the Complainant and to any person implicated thereby.

3.4 The alleged conduct by officials of the Department falls within the jurisdiction of the Public Protector to investigate.

### **4. THE INVESTIGATION**

The investigation was conducted in terms of section 6 and 7 of the Public Protector Act, 1994 and comprised the following:

#### **4.1 Correspondence with the Head of the Department (HOD)**

4.1.1 Preliminary written enquiries outlining the complaint were sent to the HOD. After several telephone calls, the HOD responded by stating that the Department suspended the Complainant's salary after she failed to show good reason as to why she should be paid while being absent without the necessary consent.

4.1.2 The HOD also forwarded correspondence which had been received from the Principal of Vezubuhle Secondary School and the Circuit Manager of the KwaMhlanga Circuit.

4.1.3 In her letter to the Circuit Manager, the Principal stated that the Complainant had been on sick leave for 103 days during 2006. She said that the Complainant had been sending medical certificates for the duration of her absence in 2006. According to the Complainant's medical certificates, her sick leave ended on 5 December 2006. The Principal stated that the Complainant did not send any medical certificates when the schools re-opened in January 2007 and yet continued to be absent from her duties. When contacted by the school, the Complainant indicated that she was still not fit to resume her duties and assured the Principal that she would send a medical certificate, but failed to do so.

#### **4.2 Correspondence with the Human Resources Section at the Nkangala Regional Office**

4.2.1 A letter was faxed to the Department's Deputy Director of the Nkangala Regional Office, Mr Mohlabane, requesting that a report from the Wellness Office be furnished. The report was submitted as requested.

4.2.2 According to the report from the Department's Wellness Division, the Complainant was referred to a psychologist for further assistance. The report stated further that the Complainant was diagnosed with major depression and it was recommended that she be transferred to a school closer to home.

4.2.3 A letter written by the Wellness Division to the Deputy Director: Human Resources Section stated that the Complainant's salary was suspended, which aggravated her condition as she was unable to pay for her medical bills. It was also mentioned that the Complainant was advised by Ms Mahlangu, of the

Wellness Division, to submit her medical certificate and show good cause for her absence from her duties, which she had done. The Wellness Division then received a report from the Department's Labour Division stating that the Complainant had been reinstated.

4.2.4 In another letter to the Deputy Director: Human Resources Section, the Wellness Division reiterated the need to address both the issue of the suspension of payment of the Complainant's salary( as this was resulting in enormous stress to her), as well as the request for the Complainant to be transferred to a school closer to home. A transfer to the Delmas Circuit was recommended, as the Complainant was from Springs. It was also stated that Ms Mahlangu from the Wellness Division, together with Mr Maja, the Department's Deputy Director Labour Relations, held a meeting with the Complainant on 6 July 2007 wherein the Complainant apologised for not submitting her medical certificates and leave forms.

#### 4.3 Meeting with officials of the Department and Complainant

4.3.1 A meeting was arranged with Mr M D Maja, Ms N G Mahlangu and Mr T Mashile. The objective was to bring all the parties together to establish the reason for the suspension of the Complainant's salary, and to settle the matter of a possible transfer to a school closer to her home.

4.3.2 The Deputy Director: Labour Relations, Mr Maja stated that the Regional Office decided to suspend payment of the Complainant's salary after she failed to submit medical certificates from the day the schools re-opened in January 2007 to 15 February 2007. He maintained that the Complainant's sick leave ended on 5 December 2006, the last day of the school term for 2006.

4.3.3 He advised that the applicable policy did not provide for payment of a salary to an educator who was absent from duty without just cause. The fact that there was

no medical certificates and leave forms in the Complainant's file confirmed that she was absent from duty without any justifiable reasons.

4.3.4 He argued that the Complainant was not hospitalised or unable to submit the documents at the time, hence she was requested to show just cause as to why her salary must be reinstated by the Department. He also advised that if the Complainant was unable to submit the documents to the school due to the strained relationship between her and the Principal, it should have been submitted to the Circuit Office in KwaMhlanga.

4.3.5 He confirmed that in their meeting with the Complainant on 6 July 2007, the Complainant apologised for not submitting her medical certificates and subsequently, submitted same.

4.3.6 The Principal of Vezubuhle Secondary school stated that the last time she received medical certificates and leave forms from the Complainant was in 2006. The medical certificates indicated that the Complainant was to be on sick leave until the schools closed on 5 December 2006.

4.3.7 She reported further that when she did not receive any documents from the Complainant in January 2007 after the schools re-opened, countless attempts were made to call the Complainant, but most of the time the Complainant's cell phone was switched off. She said that when she finally managed to speak to her, the Complainant undertook to send the documents by fax.

4.3.8 The Principal reported further that when she did not receive any documents from the Complainant, she sent one of the educators to collect the documents from the Complainant's home. The educator later reported that the Complainant refused to give him the documents.

4.3.9 Mr Mashile from the Department's Wellness Office stated that he consulted with the Complainant and advised her to seek psychological assistance because their office could only assist her up to a certain point. He said the Complainant had been sending her medical records to their office by fax, the last of which was received on 20 February 2007. He also said that he believed that the Complainant was unable to submit her medical certificates and leave forms to the school because of her high stress levels and the strained relationship with the Principal of the school.

4.3.10 Mr Mashile further stated that should the Complainant be forced to return to Vezubuhle Secondary School, there was the possibility of her having a relapse. He explained that part of her depression is caused by some of the issues that arose at the school and her strained relationship with the Principal and some staff members at the school, which had been on-going for some time.

4.3.11 Ms Mahlangu from the Wellness Office stated that she made numerous phone calls to the Complainant advising her to submit her medical certificates. She said that the Complainant was aware that it was expected of her to submit medical records to both the Wellness Division and the school. The Wellness Division required medical records for its own file, in addition to records in the personnel file of the Department's Labour Division. She advised that countless attempts were made by her to solicit a response from the Labour Division regarding the Complainant's transfer, but that no response was received.

4.3.12 The Complainant admitted that she received numerous calls from the Principal and Ms Mahlangu which she did not answer. She said that this was because, at the time, she was not willing to talk to anyone from Vezubuhle Secondary School.

4.3.13 She also confirmed that the Principal sent one of her colleagues to collect the documents, but she refused to give him the documents because the person had been intoxicated.

4.3.14 It was agreed at the meeting that:

4.3.14.1 The Complainant's salary would be reinstated with effect from 15 October 2008;

4.3.14.2 The Complainant would report at the Delmas Circuit Offices while the Labour Division tried to find a suitable school in the Delmas Circuit for her to be transferred to; and

4.3.14.3 The Deputy Director: Labour Relation gave assurance that payment of the Complainant's salary would be reinstated with effect from the end of October 2008.

## **5. OBSERVATIONS AND FINDINGS**

5.1 The Complainant failed to submit medical certificates since January 2007 and this led to her salary being suspended.

5.2 On 6 July 2007 the Complainant met with Mr Maja and apologised for not submitting medical certificates which she subsequently submitted.

5.3 The report from the Labour Division to the Wellness Office stated that the Complainant returned to service, hence Ms Mahlangu was under the impression that the payment of the Complainant's salary would be reinstated.

5.4 From 6 July 2007 when Mr Maja advised the Complainant to stay at home whilst investigations were underway, the Labour Division failed to inform the Complainant or the Wellness Division about the outcome of its investigation and her transfer.

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- 5.5 There was poor coordination between the Department's Labour Relations Division and the Wellness Office.
- 5.6 The Department agreed to reinstate payment of the Complainant's salary with effect from the end of October 2008 and transfer her to a school in the Delmas Circuit.
- 5.7 The Department transferred the Complainant, but failed to pay her October 2008 salary.

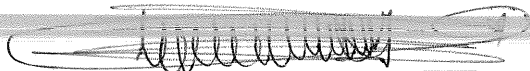
## 6. RECOMMENDATIONS

It is recommended in terms of section 182(1)(b) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994 that the Department should:

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- 6.1 Pay the Complainant her October 2008 salary as per the Department's undertaking; and
- 6.2 Ensure better coordination between its Labour Division and Wellness Divisions to ensure that the Employee Wellness Programme benefits the employees.

**7. CONCLUSION**

The Office of the Public Protector will monitor the implementation of the above recommendations on a quarterly basis.



**ADV M L MUSHWANA**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 27/08/09

Assisted by: Ms M Mashigoane, Investigator: Nelspruit Office