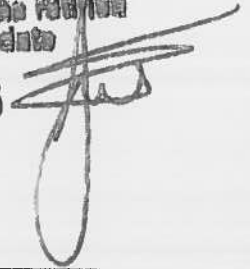


The es hereby certifies that this
Collective Agreement was ratified
by Council on this date

2018-09-25



EDUCATION LABOUR RELATIONS COUNCIL
Established in terms of the LRA of 1995 as amended



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EDUCATION LABOUR
RELATIONS COUNCIL

**EASTERN CAPE COLLECTIVE AGREEMENT
NUMBER 1 OF 2018**

**PROCEDURE FOR THE STAFFING OF ALL SCHOOLS
UNDER THE CONTROL OF THE EASTERN CAPE
EDUCATION DEPARTMENT IN THREE YEAR CYCLES**

EDUCATION LABOUR RELATIONS COUNCIL

COLLECTIVE AGREEMENT NO 1 OF 2018



1. PURPOSE OF THIS AGREEMENT

The purpose of this provincial agreement is to establish a procedure for the staffing of all schools under the control of the Eastern Cape Department of Education within the framework of the ELRC Collective Agreement 4 of 2016 to ensure stability in the staffing of schools within the province of the Eastern Cape.

2. SCOPE OF THIS AGREEMENT

This agreement applies to and binds:

- 2.1. The employer as represented by the Eastern Cape Department of Education;
- 2.2. All educators of the employer as defined in the Employment of Educators Act, No. 76 of 1998 (as amended) whether such educators are members of the trade union parties or not; and,
- 2.3. All trade unions who are Parties to the Eastern Cape Chamber of the Education Labour Relations Council.

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3. PARTIES NOTE THE FOLLOWING:

- 3.1. The annual determination of the educator post establishment by the MEC for Education in accordance with the provisions of Regulation 1 of the Schedule contained in Government Notice 1676 of 1998, as amended;
- 3.2. The ever-increasing budgetary constraints imposed on the employer as a State entity;
- 3.3. The established trend over time which indicates that the number of educators who are declared additional to their post establishment annually is in excess of three thousand;
- 3.4. The instability caused to the schooling environment by the annual redeployment of educators who have been declared additional to the establishment;
- 3.5. The need to stabilise the staff establishment of schools and in general, the school's workforce;
- 3.6. The need to ensure certainty in planning;
- 3.7. The rights of the learner to quality education; and,
- 3.8. The principle that no class shall be without a teacher.

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4. PARTIES TO CHAMBER THEREFORE AGREE THAT:

4.1. The post establishment of each school shall remain constant for the period of each three year cycle and no movement of staff shall take place unless there are significant changes in enrolment due to large scale learner migration or unless authority is granted for the permanent closure of any school. In this regard, and in line with Annexure A of this agreement, criteria shall be developed by the Parties to the Eastern Cape Provincial Chamber of the ELRC.

4.2. The number of educator posts distributed to each public school under the control of the Eastern Cape Department of Education as determined in 2018 shall be fixed for the ensuing three years.


4.3. Every 4th year, shall form the baseline for a new 3 year cycle following immediately after the expiry of the previous three year cycle. The post establishment of schools shall be revised, and all educators declared additional to the establishment in that year shall be subject to redeployment / transfer.

4.4. The exercise of determining educators in addition to the post establishment based on the operational requirements at schools, shall be conducted in line with Collective Agreement 4 of 2016 and may be conducted annually during the three year cycle at the discretion of the employer. The purpose of the annual declaration of educators additional to the post establishment shall primarily be to establish staffing trends and the grading of schools.

4.5. The principals of the schools in which educators have been identified additional to the post establishment shall ensure that the services of these educators are fully utilised.

4.6. The retention of educators identified as additional to the post establishment will not affect the grading of institutions.

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- 4.7. Notwithstanding clause 4.1 above, all educators declared additional to the establishment in any year within the three year cycle, shall have the right to be considered for transfer to appropriate vacant posts, provided they meet the curriculum requirements of that school where the vacancy exists. Such transfers shall be dealt with in terms of provisions set out in the Annexure A of this agreement.
- 4.8. During the three year cycle contemplated in clause 4.1 above, the Principal of the school is expected to ensure that the learner enrolment remains manageable within the scope of the 2018 post establishment as well as the curriculum offerings of the school.
- 4.9. Notwithstanding the operation of this agreement, the employer shall, for the duration of this agreement and, in line with Collective Agreement 4 of 2016, continue to match and place all educators declared additional to the post establishment and who remain unplaced as at December 2018.
- 4.10. Provisions of clause 4.9 above shall apply mutatis mutandis in any year regarded as a base year, i.e. every 4th year.
- 4.11. During the three year cycle contemplated in clause 4.1 above, in the event of the significant decrease or increase in learner enrolment in the province, which may have an impact on the Compensation of Employees (COE) budget, the Head of Department (HOD) must consult with Parties to the Provincial Education Labour Relations Chamber (PELRC) for a revised staffing establishment for the schools.

5. DISPUTE RESOLUTION PROCEDURE

Any dispute arising out of the Interpretation and/or application of this agreement shall be referred to the Education Labour Relation Council for resolution in terms of its constitution.

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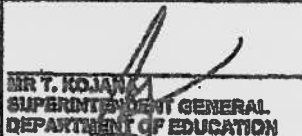
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6. DATE OF EFFECT


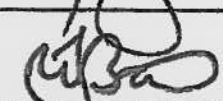
This agreement will be effective from the date it is ratified by the ELRC in accordance with the constitution of the ELRC.

Thus, done and signed at GAST LONDON on the 20TH day of SEPTEMBER 2018.

ON BEHALF OF THE STATE AS EMPLOYER

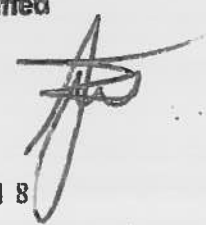
DEPARTMENT	NAME	SIGNATURE
EASTERN CAPE DEPARTMENT OF EDUCATION	TS KOJANA	 TS T. KOJANA SUPERINTENDENT GENERAL DEPARTMENT OF EDUCATION

ON BEHALF OF EMPLOYEE PARTIES

TRADE UNION	NAME	SIGNATURE
SADTU	C.K. Moringa	
CTU-ATU	J.W. Beans	

The Council hereby certifies that this Collective Agreement was ratified by Council on this date

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ANNEXURE A

PROCEDURE DIRECTIVE FOR THE STAFFING OF SCHOOLS

1. INTRODUCTION

- 1.1. The Parties to the Provincial ELRC Chamber have noted that the number of educators declared additional to the post establishments of their schools has historically always been more than 3000.
- 1.2. This situation has a potential of inflating the provincial pool of posts by 3000 or more due to temporary educators being employed in deserving schools while the process of transfer of additional educators is underway. This process in terms of Collective Agreement 4 of 2016 could take a minimum of 3 months.
- 1.3. As a consequence of the above, and within the framework of the ELRC Collective Agreement 4 of 2016, and, in order to reduce the number of additional educators to the establishment due for transfer, the following strategies will be adopted:

2. STRATEGIC APPROACH

- 2.1. The provisions of section 8(5) of the Employment of Educators Act No. 76 of 1998, which are reiterated in clause B. 6.5.6 of Collective Agreement 4 of 2016, empower the Head of Department to temporarily transfer an educator for a stated period without the recommendation of the School Governing Body.
- 2.2. The Department will effect temporary transfer of educators additional to the establishment for a stated period in order to minimise the number of educators that will be due for transfer.
- 2.3. In order to effect the temporary transfers, educators will be given a list of vacant posts and will be required to choose 10 schools from within their Circuit, an additional 5 from within the District and 5 from outside their District, the total number of schools selected will be 20 or as many posts available that would match their specific profile, whichever is the greater. All attempts will be made to place educators as close as possible to their original schools. An annual circular with a management plan directing the implementation will be issued.

- 2.4. During the period of temporary transfer, the School Governing Body, may recommend permanent absorption of educators transferred to their schools.
- 2.5. Educators who are not recommended by the School Governing Bodies for permanent absorption will remain in the schools where they are transferred, for the stated duration.
- 2.6. The Department will compile a schedule of such educators together with other educators additional to the post establishment who remain unplaced.
- 2.7. The provisions outlined from B.6.5.3 to B.6.5.9 of Collective Agreement 4 of 2016, where applicable, will be effected to deal with residual unplaced educators contemplated in clause 2.6 above.

3 TRANSFER OF SERVING EDUCATORS IN TERMS OF OPERATIONAL REQUIREMENTS

- 3.1 Operational requirements for education institutions are based on, but not limited to the following:
 - 3.1.1 Change in learner enrolment.
 - 3.1.2 Curriculum changes or a change in learners' involvement in the curriculum.
 - 3.1.3 Change to the grading or classification of an institution.
 - 3.1.4 Merging or closing of institutions.
 - 3.1.5 Financial constraints.
- 3.2 Subject to regulations on post provisioning, a Head of a Provincial Department of Education must, from time to time, inform each institution of its new educator post establishment. As a result of operational requirements the new staff establishment may provide for fewer posts than the existing staff establishment or the skills requirements of the new establishment may not match the skills profile of the incumbent educators. As a result, some serving educators may be in addition to the new establishment.
- 3.3 Each principal must inform his/her staff of the institution's new educator post establishment and of the procedure, as set out in the

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next paragraph, that will be followed in identifying educators who cannot be accommodated on the new establishment. This information must be accessible to all members of staff.

- 3.4 The procedure for the identification of serving educators in addition to the establishment as a result of operational requirements need not be performed on an annual basis, but must be performed at least once every 36 months, and shall be:
- 3.4.1 The Principal, after consulting with the educator staff of the institution at a formal staff meeting, may recommend that educators who may be declared in addition, be absorbed in vacancies that exist or will exist in the near future (not longer than six months) at that education institution.
- Vacancies that will exist in the near future refers to vacancies as a result of educators, at the particular institution, leaving as a result of retirement, boarding, resignation, promotion and employer initiated discharges, where the date of exit is known.
- 3.4.2 After considering B.6.4.1 above, the Circuit/District Manager together with the Principal shall identify the educators in addition, taking into account the following:
- 3.4.2.1 The views of the educator staff of the institution as expressed at a formal meeting convened by the principal;
- 3.4.2.2 The needs of the institution, more particularly in relation to its specific curriculum obligations, the number of classes, the timetable and the allocation of learners to classes;
- 3.4.2.3 The Circuit/District Manager shall take cognizance of the fact that there is not necessarily a direct relation between the posts identified as in addition and an educator who will be declared in addition, as there may be more than one post with substantially the same duties attached to it;
- 3.4.2.4 If a decision has to be taken regarding two or more educators competing for the same post, the principle of "last in, first out" (LIFO) shall be applied. An educator's service period for the application of LIFO shall include all continuous service rendered at any public education institution.
- 3.4.2.5 One representative per trade union party to the ELRC shall be invited by the District/Circuit Manager to observe the process.

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- 3.4.3 An educator who has been identified as in addition shall be so informed, in writing, by the Provincial Education Department concerned.
- 3.5 The following procedure shall be followed in filling vacancies in cases where a department has educators in addition of a staff establishment:
- 3.5.1 In terms of section 6 and/or section 8 of the Employment of Educators Act, (1998) the employer may transfer an educator who is in addition to another post in the department that matches his/her skills and experience.
- 3.5.2 In terms of section 6(3) and/or section 8(2) of the Employment of Educators Act, the employer may only transfer an educator permanently to a school on the recommendation of the governing body of such school.
- 3.5.3 The employer shall provide a list of vacancies and their profiles from which the educator additional to the post establishment would, as per the agreed management plan of the respective provincial department, make a choice relevant to his/her profile for transfer.
- 3.5.4 In the event the educator fails to make a choice, the employer reserves the right to make a choice on behalf of such educator.
- 3.5.5 The employer shall, after receiving the choices of the educators, submit such to the relevant school governing body for consideration and recommendation within 2 months of the request.
- 3.5.6 The HoD may, in terms of section 8(5) of the Act, temporarily transfer an educator declared additional to the staff establishment without a recommendation of the school governing body for a stated period.
- 3.5.7 In the event none of the educator's choices in terms of paragraph B.6.5.3 can be realised, the employer must first give the educator an opportunity to make written representations e.g. personal circumstances about the intended transfer to that specific school within 5 working days before a final decision is made.
- 3.5.8 The opportunity to make representations must be given to the educator before a school governing body recommends the transfer of such educator to their school.

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- 3.5.9 Having made the final decision to transfer an educator to a specific school, the employer must give the educator reasonable notice of the date on which he or she must report for duty at the new place of work. Thirty school days will be considered reasonable notice for purposes of this clause.
- 3.6 Notwithstanding the provisions contained above in sub-sections B.6.1 to B.6.4 and subject to the post provisioning model, educators declared additional to the staff establishment may be retained in their original schools.
- 3.7 Notwithstanding paragraph B.6.4, staff establishments for schools, in line with the post provisioning model, will be issued annually by the Head of a Provincial Education Department.
- 3.8 The time period of 36 months referred to in paragraph B.6.4, will not negatively affect the creation and/or filling of posts, the grading of schools or any other personnel related matter, in terms of relevant and applicable provisions, during that period.

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ANNEXURE B

PROCEDURE AND CRITERIA IN DEALING WITH SIGNIFICANT CHANGES IN THE SCHOOL STAFF ESTABLISHMENT AS CONTAINED IN CLAUSE 4.1 OF EASTERN CAPE COLLECTIVE AGREEMENT 1 OF 2018

1. PURPOSE

- 1.1. This addendum seeks to clarify and outlines the criteria in line with clause 4.1 of the main agreement.

2. SIGNIFICANT CHANGES AS CONTAINED IN CLAUSE 4.1 OF EASTERN CAPE COLLECTIVE AGREEMENT 1 OF 2018 REFERS TO THE FOLLOWING:

2.1. New School

- 2.1.1. Where a new school has been established in terms of existing legislation.

2.2. Closed school

- 2.2.1. Where a school has been closed in terms of existing legislation.

2.3. Rationalisation / Merger of school

- 2.3.1. Where a school has been rationalised or merged in terms of existing legislation or policies.

2.4. Learner enrolment

- 2.4.1. Where there is a significant increase, i.e., new settlement, rationalisation and/or merger of schools.
- 2.4.2. Where there is a significant decrease in learner enrolment, e.g., migration, rationalisation and/or merger of schools.

2.5. Other Departmental Mandates that enhance curriculum delivery.

- 2.5.1. Various mandates that the Department would continue to focus on in an attempt to improve curriculum deliverance/diversity, i.e. Incremental Introduction of African Languages, Technical Schools, Marine Schools, Remedial Teaching, Grade R Teaching, etc.

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3. CRITERIA IN DEALING WITH SIGNIFICANT CHANGES IN SCHOOL STAFF ESTABLISHMENT

3.1. New Schools

3.1.1. Where a new school has been established, the Head of Department (HOD) shall transfer additional educators in terms of clause B.6.5.6 of collective agreement number 4 of 2016. New schools will have to be approved by 30 June of the preceding year and before the post declaration in each year of the three year cycle.

3.2. Closed school

3.2.1. Where a school has been closed, the HOD shall transfer educators in terms of clause B.6.5.6 of collective agreement number 4 of 2016.

3.3. Learner enrolment

3.3.1. Increase in learner enrolment

3.3.1.1. Where the learner enrolment has been increased by 35 learners, a school shall qualify for one additional post.

3.3.2. Decrease in learner enrolment

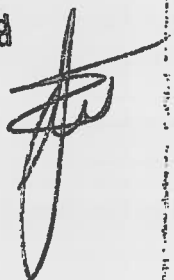
3.3.2.1. Where the learner enrolment has decreased by 35 learners, a school shall qualify for one additional educator.

3.4. Dealing with Educators from Closed Schools

3.4.1. Where a school has received additional learners through rationalisation (closure / merger / realignment) of schools, the educator will be regarded as additional and dealt with in accordance with Collective Agreement 4 of 2016.

The GS hereby certifies that this Collective Agreement was ratified by Council on this date

2018-09-25



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