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**Education Labour Relations
Council**

KwaZulu Natal Chamber

Collective Agreement No. 1 OF 2005

22 April 2005

Affirmative Action Policy

Affirmative Action Policy

1. PURPOSE:

To promote, in compliance with section 15 of the Employment Equity Act 55 of 1998, the achievement of equity in all institutions under the control of the KwaZulu-Natal Department of Education,

2. SCOPE:

This agreement shall bind the KwaZulu-Natal Department of Education, all educators employed by the KwaZulu-Natal Department of Education and all parties to the KwaZulu-Natal Chamber of the Education Labour Relations Council.

3. PARTIES TO THE CHAMBER NOTE:

That the workforce profile at institutions under the control of the KwaZulu-Natal Department of Education does not reflect the diversity of the community in which such institutions are located, and should to be transformed such that:

- The staff complement of institutions reflect the demographics of the community the institution serves.
- Designated groups are not adequately represented at the different hierarchical levels within institutions.
- The workforce must, as far as possible, reflect broadly, the demographics of the South African population.

4. PARTIES TO THE CHAMBER THEREFORE AGREE THAT:

Annexure 1 of this agreement, titled 'Affirmative Action Policy Document for Educators' be adopted as a collective agreement of the KwaZulu-Natal Chamber of the Education Labour Relations Council.

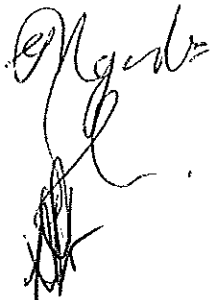
5. DATE OF IMPLEMENTATION

This agreement is effective from 13 August 2004.

6. DISPUTE RESOLUTION

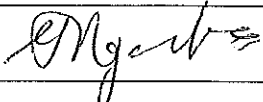
Any dispute arising from this agreement shall be referred to the Council for resolution in terms of its constitution.

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
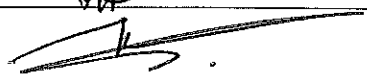
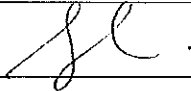
THUS DONE AND SIGNED AT THE KZN PROVINCIAL
CHAMBER OF THE ELRC ON THE

22nd DAY OF APRIL 2005 BY

DEPARTMENT	NAME	SIGNATURE
EDUCATION	NKOSINATHI NGCOBO	

ON BEHALF OF THE STATE AS EMPLOYER

AND

TRADE UNIONS	NAME	SIGNATURE
NAPTOSA	B. H. FISHER	
NATU	BP MPUNGOSE	
SADTU	S. C. NKOSI	
SAOU		

ON BEHALF OF LABOUR

AFFIRMATIVE ACTION POLICY DOCUMENT FOR EDUCATORS

1. INTRODUCTION

Affirmative Action should be interpreted not as an activity undertaken in addition to other Administrative task, but as an essential tool for achieving the Department's strategic and operational goals. It follows that Affirmative Action is not an isolated function carried out only by specially appointed staff, but rather an integral element to every aspect of the Department's management practices. Central to the Affirmative Action Policy is the fact that responsibility for Affirmative Action is no longer the preserve of an Affirmative Action specialist, but of every Manager, Supervisor and Human Resource Practitioner.

The KwaZulu – Natal Department of Education and Culture hereby acknowledges the existence of inequalities, imbalances, prejudices and injustices as a consequence of the past discriminatory policies and practices.

It is therefore necessary for the Department to introduce corrective steps in order to ensure that those who have been historically disadvantaged by unfair discrimination are able to derive full benefit from an equitable employment environment.

2. SCOPE OF APPLICATION

This policy applies to Educators employed by the KwaZulu-Natal Department of Education in terms of the Employment of Educators Act, 1998 (Act 76 of 1998) as amended.

3. AUTHORISATION

- Constitution 1996 (Act 108 of 1996)
- Labour Relations Act 1995 (Act 66 of 1995) as amended
- Employment Equity Act 1998 (Act 55 of 1998)
- Employment of Educators 1998 (Act 76 of 1998) as amended
- Skills Development Act 1998 (Act 97 of 1998)
- Public Finance Management Act, 1998
- Promotion of Equality and Prevention of Unfair Discrimination Act
- ELRC Resolution No.5, 1998
- South African Schools Act, 1996 (Act 84 of 1996) as amended
- Personnel Administration Measures, Chapter 3(6)(b)

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4. OBJECTIVES

The objectives of the Department's Affirmative Action Policy, within the framework of the applicable legislation, are to:

- 4.1 Enhance the capacities of the historically disadvantaged through the development and introduction of practical measures that support their advancement within the Department;
- 4.2 Inculcate in the Department measures designed to further diversity in the workplace based on equal dignity and respect for all people;
- 4.3 Remove all forms of discriminatory practices based on race, gender, disability, age and language so as to achieve equity in the Department;
- 4.4 Design and implement Education Training and Development Programmes that will empower employees at all occupational levels in particular the designated groups;
- 4.5 Examine and modify traditional management styles and empower management to manage diversity;
- 4.6 Accelerate the intake and empowerment of designated groups at all occupational levels.
- 4.7 Give particular attention to gender representivity at all levels;
- 4.8 Make employment more accessible to persons with disabilities; and
- 4.9 Address the uncertainties and fears generated by the transformation process.

5. POLICY PROVISIONS:

- 5.1 All appointments and promotions must be made in accordance with this policy as well as the Department's Recruitment Policy for Institution and Office-based Educators.
- 5.2 The advertisement for any post must indicate that the Department is an Affirmative Action, equal opportunity employer and that all posts will be filled with the intention of achieving the numerical goals of the Department as set out in the Employment Equity Plan.
- 5.3 Candidates must be shortlisted in terms of the criteria agreed upon by parties to the Education Labour Relations Council (ELRC) but must give due regard to the Department's numerical goals.
- 5.4 In cases where the Department's workforce profile reflects that there is under – representation in that level or category of the workforce where the appointment is to be made then persons falling within the under – represented group must as far as reasonably possible be shortlisted provided that they are suitably qualified.


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- 5.5 When determining whether a person is suitably qualified for a job, the Department may not discriminate against a person solely on the ground of that person's lack of relevant experience.
- 5.6 All shortlisted applicants must as far as reasonably possible be interviewed.
- 5.7 At the conclusion of the interview the candidates must be ranked on the basis of merit. It must be noted that at this stage of the process merit must be the only criterion used.
- 5.8 From the merit list (a) the person falling within the most under – represented group in the category or level of the workforce where the appointment is to be made, must be recommended provided that he/ she scores at least 50% at the interview. (b) Should a candidate from the most under – represented group score less than 50% then a candidate from the next most under – represented group must be recommended provided that he/ she scores at least 50%.
- 5.9 In instances where there is no clear preference due to the same level of under – representivity then merit will be the over – riding criterion.
- 5.10 The Chief Executive Officer should always ensure that the appointment is in line with the provisions of this policy.
- 5.11 In addition to the provisions of Chapter 3(6)(3)(b) of the Employment of Educators Act, the recommendations of the School Governing Body or Council for FET or the relevant recommending authority may be declined in the following circumstances:
- The provisions of this policy have been incorrectly applied or have not been applied.
 - There is evidence of bias and/ or procedural irregularities.
- 5.12 The workforce profile of the school should reflect diversity.
- 5.13 The School Governing Body when making recommendations must take into consideration the Department's workforce profile. A copy of the workforce profile of the school where the appointment is to be made must accompany their recommendations for the filling of the post.

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6. TRAINING AND DEVELOPMENT

The Department will:

- 6.1 induct, orientate, train, mentor and embark on the Education Training and Development Programmes for members of the designated groups and tailor these to suit their needs.
- 6.2 provide the necessary resources for training programmes and ensure that participation in such programmes is supported by line managers;
- 6.3 liaise with managers to ensure that the training provided is related to the competencies required for enhancing job performance;
- 6.4 liaise with training providers to ensure that training and education contribute meaningfully to career development;
- 6.5 provide training to line managers, which enables them to undertake their Affirmative Action responsibilities;
- 6.6 capacitate all employees and school governing bodies, to engender respect for diversity based on equal dignity and respect for all employees;
- 6.7 empower educators to meet curriculum needs, which would contribute towards provision of quality education.
- 6.8 other forms of training will be provided in line with the Department's Workplace Skills Plan and Training and Development Policy.

7. MONITORING

Affirmative Action within the Department will be monitored through the legislative framework of the Employment Equity Act, 1998 and other relevant prescripts.

8. DISPUTE PROCEDURES

Dispute about the implementation or interpretation of this policy will be referred in writing to the CCMA or Bargaining Council within six months after the act or omission that allegedly constitutes unfair discrimination.

9. CONCLUSION

The value of equality has become a founding principle upon which the current constitutional dispensation of our country is built. Equality is also central to the Bill of Rights, in which it is established as the first substantive right.

Taking into account the legislative prescripts and the constitutional imperatives, the KwaZulu-Natal Department of Education and Culture has developed an Affirmative Action Policy as a corrective measure to bring about equality for the designated groups.

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AFFIRMATIVE ACTION POLICY

DEFINITIONS:

1. **Black people:** means Africans, Coloured and Indians
2. **Designated groups:** means black people, women and Persons with disabilities
3. **Disabled:** persons whose prospects of securing and retaining suitable employment or promotion are substantially reduced as a result of physical or mental impairment.
4. **Suitably qualified:** refers to anyone with a combination of the following factors, in addition to formal qualifications:
 - Prior learning
 - Relevant experience or
 - Capacity to acquire within a reasonable time, the ability to do the job. Trainability of that person (How trainable is that person).
5. **Under – representation:** Where a person from the designated group is numerically under – represented in a particular level and category of the workforce.
6. **Institution Based Educators:** Educators employed in a Public School, Further Education and Training Institution (FET)
7. **Workplace:** refers to the Provincial Department of Education.
8. **Workforce Profile:** refers to statistics indicating the demographics of employees, according to race, gender and salary levels, within the Department.

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