

Resolution

No 5

EDUCATION LABOUR RELATIONS COUNCIL

RESOLUTION NO 5 OF 1998

1. **Transfer of Serving Educators in terms of operational requirements.**
2. **The advertising and filling of educator posts.**

Parties to Council Note the following:

- a. The obligations of the State as the employer in terms of sections 195 and 197 of the Constitution of the Republic of South Africa.
- b. The obligations of the employer in terms of section 189 of the Labour Relations Act, 1995, the Employment Equity Act, 1998 and other applicable labour legislation.
- c. The role of the governing bodies in terms of section 20(1)(i) of the South African Schools Act, as is embodied in chapter 3 of the Employment of Educators Act, 1998.
- d. The requirements of a post as determined by the Minister of Education from time to time.
- e. The purpose of this agreement is to provide measures in terms of the Labour Relations Act, 95 to accommodate the obligations of the employer against the role of the governing bodies in making recommendations in the appointment of educators.

The parties therefore agree to:

1. Transfer of serving Educators in terms of operational requirements.

- 1.1 Operational requirements for educational institutions are based on, but not limited to the following:
 - 1.1.1 Change in pupil enrolment
 - 1.1.2 Curriculum changes within a specific education institution
 - 1.1.3 The change to the grading of the specific education institution
 - 1.1.4 The financial restraints
- 1.2 This resolution does not deal with the transfer of level one serving educators declared in excess in terms of operational requirements linked to rationalisation to effect equity in staff provisioning. This aspect is covered by the resolution dealing with the procedure for rationalisation and redeployment of educators in the provisioning of educator posts.



- 1.3. In cases referred to in paragraph 1.1 above the following procedure shall apply:
- 1.3.1 All vacancies that arise at educational institutions must be offered to serving educators displaced as a result of operational requirements of that specific provincial education department as a first step.
- 1.3.2 All vacancies must be advertised and filled in terms of Schedule 1 of this resolution; Provided that:-
- a) every attempt is made to accommodate serving educators, displaced as a result of operational requirements, in suitable vacant posts at educational institutions or offices; and
 - b) a provincial education department may publish a closed vacancy list. In such an event, the procedures contained in the resolution dealing with the rationalisation and redeployment of educators in the provisioning of educator posts shall apply.
- 1.3.3 When a governing body exercises its function in terms of section 20(1)(i) of South African Schools Act, 1996 and chapter 3 of the Employment of Educators Act, 1998, they must accommodate the obligations of the employer towards serving educators. The governing body must also take into account the requirements for appointment as determined by the Minister of Education and/or the requirements of the post as determined by the Head of the Provincial Education Department.
- 1.3.4 All applicants, who are serving educators, displaced as a result of operational requirements and who are suitable candidates for a vacant post in an education institution or office, must be shortlisted.
- 1.3.5 At historically disadvantaged institutions (institutions that fell under the control of the ex-Department of Education and Training, Homeland Governments and TBVC States), any educator who acted for longer than 2 continuous years in the post, at the institution, must be included in the interviews for the post: Provided that-
- a) the educator is currently in the post;
 - b) the post is part of the post establishment of that institution;
 - c) the relevant provincial education department had approved the appointment; and
 - d) the educator must have applied for the post.

5/11/18

2. The advertising and filling of educator posts.

- 2.1 Parties to Council agree to the attached document (Schedule 1), titled "The Advertising and Filling of Educator Posts".
- 2.2 In the advertising and filling of educator posts the employer will be guided by:-
- a) affirmative action measures for designated groups, namely Blacks (which include Indians, Coloureds and Africans), women and disabled educators; and
 - b) representivity.

3. SCOPE OF THE AGREEMENT

This agreement applies to and shall bind:

- 3.1 the employer; and
- 3.2 all the employees of the employer as defined in the Employment of Educators Act of 1998 whether such employees are members of trade union parties to this agreement or not.

4. TRANSITIONAL MEASURES

- 4.1 All advertisements and processes that commenced prior to this resolution will continue through to completion in terms of the provisions that were in place at the time of commencement.
- 4.2 Notwithstanding 4.1 above, parties may, by agreement, opt to complete a process already embarked upon in terms of this resolution.
- 4.3 In the event of any conflict existing between a provision of this agreement and a provision of an existing agreement of Council, the provisions of this agreement shall prevail, subject to 4.1 and 4.2 above.

5. DISPUTE RESOLUTION

Any dispute about the interpretation or application of this agreement, including the attached Schedule 1, shall be resolved in terms of the dispute resolution procedure of the Council.

6. DEFINITIONS

In this agreement, unless the context indicates otherwise:

- 6.1 "college" means a college of education, technical college, youth college, community college, state aided college, state college or other college which is wholly or partly funded by the State.

- 6.2 "closed vacancy list" means a list advertising vacant posts where only educators declared in excess may apply;
- 6.3 "educational institutions" means all institutions including public schools, further education and training institutions, departmental offices and adult basic education centres that are under the control of the provincial departments of education or the Department of Education, as defined in the Employment of Educators Act of 1998;
- 6.4 "employee" means an educator as defined in the Employment of Educators Act of 1998;
- 6.5 "employer" means the employer as defined in the Employment of Educators Act of 1998;
- 6.6 "employing department" means the relevant provincial department of education or the Department of Education;
- 6.7 "governing body" means the governing body as contemplated in the South African Schools Act, 1996, as amended;
- 6.8 "interview committee" means the committee as contemplated at schedule 1, paragraph 3 of this resolution; and
- 6.9 "public schools" means public schools as defined in the South African Schools Act, 1996, as amended.



S/mB



THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 11th DAY OF NOVEMBER 1998.

ON BEHALF OF THE EMPLOYER:

DEPARTMENT	NAME	SIGNATURE
		<i>S M Deegan</i>

ON BEHALF OF THE EMPLOYEE PARTIES:

TRADE UNION	NAME	SIGNATURE
<i>SADPCU</i>	<i>T. W. NKECHI</i>	<i>[Signature]</i>
<i>SADU</i>	<i>JC KLOPPER</i>	<i>[Signature]</i>
<i>MAPTOSA</i>	<i>H. A. OVENTS</i>	<i>[Signature]</i>

SCHEDULE 1

THE ADVERTISING AND FILLING OF EDUCATOR POSTS

1. ADVERTISING

1.1 The advertisement of vacant posts for educators must:

- (a) be self-explanatory and clear and must include:-
 - i) minimum requirements,
 - ii) procedure to be followed for application,
 - iii) names and telephone numbers of contact persons,
 - iv) preferable date of appointment, and
 - v) closing date for the receipt of applications;
- (b) be accessible to all who may qualify or are interested in applying for such post(s);
- (c) be non discriminatory and in keeping with the provisions of the Constitution of the RSA; and
- (d) clearly state that the State is an affirmative action employer.

1.2 All vacancies in public schools are to be advertised in a gazette, bulletin or circular. The existence of which shall be made public by means of an advertisement in the public media both provincially and nationally. The information to be furnished in the latter advertisement shall include offices and addresses where the gazette, bulletin or circular is obtainable. The gazette, bulletin or circular must be circulated to all educational institutions within the province.

1.3 Educator posts outside public schools shall be advertised both in the national and provincial media and by circular to all schools in the relevant province, ensuring that the provisions of paragraph 1.1 are met.

1.4 Educator posts at colleges shall be advertised in the national and provincial media by the employing department, ensuring that the provisions of paragraph 1.1 are met.

2. SIFTING

2.1 The employing department shall acknowledge receipt of all applications by:

- 2.1.1 informing all applicants in writing of receipt,
- 2.1.2 clearly indicating whether the application is complete or not, and
- 2.1.3 indicating whether the applicant meets the minimum requirements for the post and that such applications have been referred to the institutions concerned.

- 2.2 The employing department shall handle the initial sifting process to eliminate applications of those candidates who do not comply with the requirements for the post(s) as stated in the advertisement.
- 2.3 In the case of colleges, where applications are received at the institution, the college council shall acknowledge receipt of all applications in terms of 2.1 above.
- 2.4 Trade Union parties to Council will be given a full report, at a formal meeting, on:-
- 2.4.1 names of educators who have met the minimum requirements for the post/s in terms of the advertisement;
- 2.4.2 names of educators who have not met the minimum requirements for the post/s in terms of the advertisement; and
- 2.4.3 other relevant information that are reasonably incidental thereto.

3. **SHORTLISTING AND INTERVIEWS**

- 3.1 Interview Committees shall be established at educational institutions where there are advertised vacancies.
- 3.2 The Interview Committee shall comprise:
- 3.2.1 In the case of public schools:-
- a) one departmental representative (who may be the school principal), as an observer and resource person;
 - b) the Principal of the school (if s/he is not the departmental representative), except in the case where s/he is an applicant;
 - c) members of the school governing body, excluding educator members who are applicants to the advertised post/s; and
 - d) one union representative per union that is a party to the provincial chamber of the ELRC. The union representatives shall be observers to the process of shortlisting, interviews and the drawing up of a preference list.
- 3.2.2 In the case of colleges:-
- a) one departmental representative, as an observer and resource person;

- b) the head of the institution, except in the case where s/he is an applicant;
- c) members of the college council, excluding educator members who are applicants to the advertised post/s; and
- d) one union representative per union that is a party to the provincial chamber of the ELRC. The union representatives shall be observers to the process of shortlisting, interviews and the drawing up of a preference list.

- 3.3 Each Interview Committee shall appoint from amongst its members a chairperson and a secretary.
- 3.4 All applications that meet the minimum requirements and provisions of the advertisement shall be handed over to the school governing body responsible for that specific public school.
- 3.5 The school governing body is responsible for the convening of the Interview Committee and they must ensure that all relevant persons/organisations are informed at least 5 working days prior to the date, time and venue of the shortlisting, interviews and the drawing up of the preference list.

Where the Principal is an applicant, a departmental official may assist the school governing body.

- 3.6 The Interview Committee may conduct shortlisting subject to the following guidelines:
- 3.6.1 The criteria used must be fair, non-discriminatory and in keeping with the Constitution of the country.
 - 3.6.2 The curricular needs of the school.
 - 3.6.3 The obligations of the employer towards serving educators.
 - 3.6.4 The list of shortlisted candidates for interview purposes should not exceed five per post.
- 3.7 The interviews shall be conducted according to agreed upon guidelines. These guidelines are to be jointly agreed upon by the parties to the provincial chamber.
- 3.8 All interviewees must receive similar treatment during the interviews.

- 3.9 At the conclusion of the interviews the interviewing committee shall rank the candidates in order of preference, together with a brief motivation, and submit this to the school governing body for their recommendation to the relevant employing department.
- 3.10 The governing body must submit their recommendation to the provincial education department in their order of preference.
- 3.11 In the case of colleges, the interviewing committee shall submit its ranked, preference list to the college council for their recommendation to the relevant employing department.

4. APPOINTMENT

- 4.1 The employing department must make the final decision subject to:
- 4.1.1 satisfying itself that agreed upon procedures were followed; and
- 4.1.2 that the decision is in compliance with the Employment of Educators Act of 1998, the South African Schools Act, 1996 and the Labour Relations Act, 1995.
- 4.2 The employer will inform all unsuccessful candidates, in writing, within eight weeks of an appointment being made.

5. RECORDS

The employer must ensure that accurate records are kept of proceedings dealing with the interviews, decisions and motivations relating to the preference list submitted by school governing bodies and other such structures.

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