Education Labour Relations Council
KwaZulu-Natal

Collective Agreement 1 of 2004
13 August 2004

GRIEVANCE PROCEDURE FOR HANDLING OF SCHOOL BASED PROMOTION GRIEVANCES
1. PURPOSE

To ensure that all school based promotion grievances are attended to expeditiously.

2. SCOPE

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

3. PARTIES TO THE CHAMBER NOTE

That Chapter H of PAM does not adequately address promotion grievances.

4. PARTIES TO THE CHAMBER THEREFORE AGREE THAT:

All promotion grievances related to school-based promotion posts shall be handled in accordance with the procedure as outlined in Annexure 1 of this agreement.

5. DATE OF IMPLEMENTATION

This agreement shall be 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.

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

13th DAY OF August 2004 BY

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ELRC KZN: Collective Agreement 1 of 2004 – Promotion Grievance Handling
ON BEHALF OF THE STATE AS EMPLOYER

AND

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ON BEHALF OF LABOUR
PROCEDURES FOR DEALING WITH SCHOOL BASED
PROMOTION GRIEVANCES

This Grievance procedure is developed as an expedited process within the frame work of the procedure
contained in the Personnel Administration Measures with due cognizance taken of the Labour
Relations Act of 1995 (as amended) and the Employment of Educators Act No. 76 of 1998 (as
amended). This has been necessitated by the unique nature of School Based Promotions Grievances.

PROCEDURE

1. Should an educator or a union acting on behalf of its member/s or acting on its
own lodge a grievance, the prescribed Grievance Form (GR 1) must be
completed.

   ■ Ideally grievances should be lodged within 7 days of the grievance
     being known.
   ■ Grievances lodged after 7 days may prejudice persons lodging such
     grievances in that appointments may have been effected or may be
     in the process of being effected.
   ■ Where an appointment has been effected, grievances must be
     lodged in the same manner but grievance hearings will not be held.
     The Department of Education shall inform the applicant that an
     appointment had been made and that the dispute should be referred
to the ELRC.

2. Form GR1 must be submitted to the Regional Office for the attention of the
labour relations component in the Region in which the disputed post was
advertised.

3. The Region must immediately, if possible, but not later than 2 working days,
acknowledge receipt of the grievance on the form (GR 2) which must be
transmitted to the aggrieved party.

4. If the disputed post is not filled the region must immediately inform the
Directorate: Human Resource Management to temporarily place the filling of
the post on hold.

ELRC KZN: Collective Agreement 1 of 2004 – Promotion Grievance Handling
5. The Region shall:

- assign an official, preferably from the Labour Relations Component to gather the necessary information and identify potential witnesses for the Grievance Hearing.

- establish a Grievance Committee comprising of the following:
  - Chairperson: Chief Education Specialist/Deputy Manager: Labour Relations
  - Members: Deputy Chief Education Specialist/Assistant Manager: Labour Relations
  - Assistant Manager: Promotions

- provide secretarial services to the Committee.

- inform the aggrieved party of the date, time and place and, in respect of individuals, of their rights to representation, at least 7 days before the hearing (GR 3). Should the applicant not attend without good cause shown, the matter may be heard in absentia.

6. The aggrieved shall have the right:

- to be present at the hearing
- to be represented by his/her union
- to call his/her witnesses, and,
- to cross examine witnesses called by the employer

7. Should there be a need, the parties may meet prior to the hearing to exchange relevant documents and narrow issues etc.

8. The Grievance Committee, after having heard the parties must make a finding. Should the findings be in favour of the applicant, the Grievance Committee shall make appropriate recommendations to the Regional Senior Manager who shall implement the recommendation.

9. The finding of the Committee shall be recorded on form GR 4 and signed by the aggrieved, his/her Union if applicable and the Chairperson of the Grievance Committee.

10. If the Grievance Committee finds against the applicant, it shall recommend to the Regional Senior Manager whether to release the post or not.

11. The Chairperson of the Grievance Committee shall communicate the decision of the Committee to the grievant within 3 working days of the conclusion of the grievance hearing.
12. The grievant must within 3 working days of receipt of the findings indicate on form GR4 whether the findings are accepted or whether the grievant intends lodging a dispute with the ELRC.
EXPEDITED PROMOTIONS GRIEVENCE FORM

1. Details of the Aggrieved Educator

(a) Surname: .................................................................

(b) First Name/s: ...........................................................

(c) I. D. No: ......................................................................

(d) Persal No: ..............................................................

(e) Postal Address ..........................................................
     ...........................................................................
     ...........................................................................
     ...........................................................................
     ...........................................................................
Postal Code: ..............................................................
Tel: ......................................................(W) Tel: ......................................................(H)
Fax: .......................................................... Cell: ......................................................

Current School/Department Office where Grievant is
Stationed ......................................................................

Is the grievant represented by a Trade Union? Yes ☐ NO ☐
if yes, which union? .................................................
Postal address: .........................................................
........................................................................
........................................................................
........................................................................
........................................................................
Tel: ...................................................... Fax: ......................................................
Contact person: ..................................................... Cell: ......................................................

2. Details of the Grievence HRM No: .............................

2.1 Post No: .......................................................... Region: ..............................................

2.2 Post Description: ........................................ District: ................................................

2.3 Name School: ................................................ Circuit: ........................................ Ward: ................................................
     Tel: ........................................................ Fax: ........................................................

2.4 Reasons for being aggrieved/ or facts of the case. (Please include the relevant
section/s of the regulation/ procedure/ legislation/ collective agreement etc. that
has/have been breached:.............................................
3. This grievance arose on: .................................................................

3.1 Relief Sought: (Indicate clearly the relief you seek). .........................

3.2 Would relief you seek affect the rights and/or interests of other persons.
   If yes furnish details of the other persons who may be affected.

I confirm that all the above information presented above is, to the best of my knowledge true and correct.

I further accept that in participating in this expedited process I am bound by the procedures set out in Resolution 1 of 2004.

SIGNATURE OF GRIEVEENT .............................................

DATE .................................................................
NAME OF REGION

NAME OF GRIEVENT: ...........................................................

PERSONAL NO: ..................................................

NAME OF SCHOOL/ INSTITUTION: ..........................................................

POST(S) IN DISPUTE: POST NO: ......................

POST DESCRIPTION: ..................................................

SCHOOL/ INSTITUTION: ..........................................................

HRM NO: ....................

ACKNOWLEDGEMENT OF RECEIPT OF GRIEVANCE

Your grievance referral form dated ......................is hereby acknowledged.

You will be advised of the date and venue of your grievance hearing in due course.

.............................................

.............................................

LABOUR RELATIONS OFFICER

DATE: ....................
NAME OF REGION

NAME OF GRIEVANT : ........................................... Persal No. ...........

NAME OF SCHOOL/ INSTITUTION: ............................................................

POST IN DISPUTE : 

POST NO: ....................................................

POST DESCRIPTION: ........................................

SCHOOL/ INSTITUTION: ................................

DISTRICT: ......................................................

REGION : ......................................................

HRM NO: ........................................

NOTICE OF GRIEVANCE HEARING

Be advised that the grievance hearing in respect of the above post(s) has been set down as follows:

VENUE: ..................................................................................

DATE : ........................................

TIME : ........................................

You may be represented by a fellow employee or union representative.

________________________________________________________________________

LABOUR RELATIONS OFFICER

DATE :
DEPARTMENT OF EDUCATION : KWAZULU-NATAL

NAME OF REGION

REGIONAL GRIEVANCE COMMITTEE DECISION

In the grievance lodged by...........................................(Persal No..................) in respect of Post No...........................of HRM No.......................(HOD/DP/PRINCIPAL) at..................................................School, the Grievance Committee finds that

......................................................................................................................................................
......................................................................................................................................................
......................................................................................................................................................
......................................................................................................................................................

The Grievance Committee therefore recommends that:

......................................................................................................................................................
......................................................................................................................................................
......................................................................................................................................................
......................................................................................................................................................

..........................................................  ..........................................................  ..........................................................
CHAIRPERSON  SIGATURE  DATE
GRIEVANCE COMMITTEE

1. This decision is accepted by the undersigned parties.
2. This decision is Not accepted by the grievant.

......................................................................................................................................................

NB: In the event that a dispute is being lodge, a copy of this form must accompany the dispute referral form.

..........................................................  ..........................................................  ..........................................................
NAME OF GRIEVANT  SIGATURE  DATE

..........................................................  ..........................................................  ..........................................................
UNION REPRESENATIVE ON BEHALF OF GRIEVANT  SIGATURE  DATE
Education Labour Relations Council
KwaZulu Natal Chamber

Collective Agreement No. 2 OF 2004

THE AFFIRMATIVE ACTION POLICY FOR FILLING OF SCHOOL-BASED EDUCATOR POSTS
1. PURPOSE

(1) To promote and support the advancement of historically disadvantaged groups, as designated in the Employment Equity Act, 55 of 1998, in the appointment or promotion to institution-based educator posts within the KZN Department of Education.

(2) To make, as far as possible, the educator corps, both within individual schools and within the province of KwaZulu Natal, broadly representative of the population of KwaZulu Natal.

(3) To remove all forms of discriminatory practices as listed in section 9(3) of the Constitution of the Republic of South Africa, Act 108 of 1996.

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 KwaZulu Natal Department of Education shall communicate the contents of this agreement to all institutions and bodies that perform functions related to the appointment and/or promotion of educators, as defined in the Employment of Educators Act, 76 of 1998, as amended, wherein the KwaZulu Natal Department of Education is the employer.

4. PARTIES TO THE CHAMBER THEREFORE AGREE THAT:

Affirmative Action in the appointment and/or promotion of educators within the KwaZulu Natal Department of Education shall be in accordance with the provisions of this agreement as outlined in Annexure 1 of this document.

5. DATE OF IMPLEMENTATION

This agreement shall be effective from 13 August 2004

6. DISPUTE RESOLUTION

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

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

_________________________ 2004

DAY OF ________________

DEPARTMENT  NAME  SIGNATURE

ON BEHALF OF THE STATE AS EMPLOYER

AND

ELRC KZN Chamber: Collective Agreement No. 2 of 2004 – Affirmative Action Policy
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ON BEHALF OF LABOUR
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 the following:
Institution Based Educators employed in terms of the Employment of Educators Act, 1998 (Act 76 of 1998) as amended.

3. AUTHORISATION

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
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.

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 60% at the interview. (b) Should a candidate from the most under - represented group score less than 60% then a candidate from the next most under - represented group must be recommended provided that he/ she scores at least 60%.

5.9 In the case where none of the candidates from a merit list achieves a score of at least 60% the post must be re-advertised. Candidates who previously applied for such post will not be excluded from re-applying.

5.10 In instances where there is no clear preference due to the same level of under - representivity then merit will be the over - riding criterion.

5.11 The Chief Executive Officer should always ensure that the appointment is in line with the provisions of this policy.

5.12 The recommendations of the School Governing Body or Council for PET or the relevant recommending authority can only 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.

5.13 The workforce profile of the school should reflect diversity.
5.14 The School Governing Body when making recommendations must take into consideration the Department's workforce profile. A copy thereof must accompany their recommendations for the filling of the post, otherwise such recommendation shall not be approved.

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.
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.
Staffing Committee Report to Chamber on PPN Consultation – 13 August 2004

1. Meetings
Staffing Committee meetings were held on 10, 11 & 15 June 2004 to conclude the outstanding issues related to the PPN for 2004 and consultation meetings with the MEC for PPN 2005 proceeded on 29 June 2004, 19 July 2004, 20 July 2004 and 12 August 2004.

2. PPN 2004
An interim arrangement was agreed for the balance of 2004 whereby:

- All circulars advertising posts were withdrawn and new circulars advertising vacancies were released. (HRM Circular Nos. 61, 62, 64, 67 and 68 of 2004)
- Applicants were requested to re-apply for vacancies in terms of the new bulletin/s.
- Educators who were regarded as surplus and moved to other institutions were requested to move back to their original institutions.
- Institutions that had vacancies were allowed to employ temporary educators to ensure delivery of the curriculum.

The above was agreed at a meeting between the MEC and leaders of parties to chamber, held on 14 June 2004.

Staffing Committee meetings were held on 10, 11 & 15 June 2004 to give effect to decisions of the last chamber meeting and to decisions of the abovementioned meeting between the MEC and Unions.

The relevant circulars were issued by the Department of Education and a management plan for the filling of advertised vacancies was finalized such that successful applicants assume duty on 04 October 2004.

3. PPN 2005
Consultation meetings between the MEC and/or her representatives were held on 29 June 2004, 19 July 2004, 20 July 2004 and 12 August 2004.

Whilst responses to many of the questions raised by labour had been provided some information is still outstanding.

No agreement has yet been reached and consultations are proceeding.

The Audit Task Team of the Staffing Committee has been mandated to elicit all the applicable information and to prepare a report for the Staffing Committee.
It is envisaged that the Audit Task Team would complete their work by 26 August 2004 and a further consultation meeting between the MEC and the educator Unions shall be convened in order to conclude consultation of the creation of educator posts for 2005.

Consultation between the KwaZulu Natal Department of Education and educator unions on the distribution of educator posts is scheduled for September 2004.

Leon Pillay (provincial secretary)