

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



**DRAFT COLLECTIVE AGREEMENT  
NO. x OF 2014**

**XXX**

**TRANSFER OF SERVING EDUCATORS  
IN TERMS OF OPERATIONAL  
REQUIREMENTS**

# **EDUCATION LABOUR RELATIONS COUNCIL**

## **COLLECTIVE AGREEMENT NO X OF 2014**

### **TRANSFER OF SERVING EDUCATORS IN TERMS OF OPERATIONAL REQUIREMENTS**

#### **1. PURPOSE OF THIS AGREEMENT**

The purpose of this agreement is to amend measures regarding the transfer of serving educators in terms of operational requirements.

#### **2. SCOPE OF THIS AGREEMENT**

This agreement applies to and binds:

2.1 The employer, and

2.2 All the employees of the employer as defined in the Employment of Educators Act, 1998 (as amended) whether such employees are members of trade union parties to this agreement or not.

#### **3. THE PARTIES TO COUNCIL NOTE AS FOLLOWS:**

3.1 Education Labour Relations Council Resolution No. 2 of 2001.

#### **4. THE PARTIES TO COUNCIL THEREFORE AGREE AS FOLLOWS:**

4.1 To request the Minister of Education to amend paragraph 2.4 of Chapter B of the Personnel Administration Measures by including the attached document (Annexure A).

#### **5. DATE OF IMPLEMENTATION**

This agreement shall, in respect of parties and non-parties, come into effect on the date it is signed in Council.

## 6. DISPUTE RESOLUTION

Any dispute arising from the application or interpretation of this collective agreement shall be referred to this Council for resolution in terms of its dispute resolution procedures.

## 7. DEFINITIONS

- 7.1 “**constitution**” means the constitution of the Education Labour Relations Council.
- 7.2 “**Council**” means the Education Labour Relations Council.
- 7.3 “**employee**” means an educator as defined in the Employment of Educators Act, 1998, as amended.
- 7.4 “**employer**” means the employer as defined in the Employment of Educators Act, 1998, as amended.
- 7.5 “**Labour Relations Act**” means the Labour Relations Act No. 66 of 1995, as amended.
- 7.6 “**workplace**” means the registered scope of the Council.

THUS DONE AND SIGNED AT CENTURION THIS THE \_\_\_\_\_ DAY  
OF \_\_\_\_\_ 2014

### ON BEHALF OF THE STATE AS THE EMPLOYER

DEPARTMENT	NAME	SIGNATURE
BASIC EDUCATION		

### ON BEHALF OF THE EMPLOYEE PARTIES

TRADE UNION	NAME	SIGNATURE
“SADTU”		
CTU “ATU”		

## ANNEXURE A

### 2.4 TRANSFER OF SERVING EDUCATORS IN TERMS OF OPERATIONAL REQUIREMENTS

- a) Operational requirements for education institutions are based on, but not limited to the following:
- i) Change in learner enrolment.
  - ii) Curriculum changes or a change in learners' involvement in the curriculum
  - iii) Change to the grading or classification of an institution.
  - iv) Merging or closing of institutions.
  - v) Financial constraints.
- b) 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.
- c) Each principal must inform his/her staff of the institution's new educator post establishment and of the procedure, as set out in the 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.
- d) 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 24 months, and** shall be:
- i) 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.

- ii) After considering (1.4.1.) above, the Circuit/District Manager together with the Principal shall identify the educators in addition, taking into account the following:
- The views of the educator staff of the institution as expressed at a formal meeting convened by the principal;
  - 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;
  - 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;
  - 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.
  - One representative per trade union party to the ELRC shall be invited by the District/Circuit Manager to observe the process.
- iii) An educator who has been identified as in additional shall be so informed, in writing, by the provincial education department concerned.
- e) The following procedure shall be followed in filling vacancies in cases where a department has educators in addition of a staff establishment:
- In terms of section 6 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.
  - In terms 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

- The employer shall have 30 school days to find a school where the governing body is willing to accept the permanent transfer in terms of section 8 of any educator who has been declared in addition.
- If within the period of 30 school days, the employer has not succeeded in finding a school where the governing body is willing to accept the permanent transfer of that specific educator to their school, the employer shall match that educator together with other educators who have been declared in addition, to vacant posts that match their skills and experience at other schools and shall then in terms of section 6(3)(a) of the Employment of Educators Act provide the school governing bodies of such schools with the list of names of these educators who have been declared in addition and who are suitable for such posts. The school governing bodies concerned shall then in terms of section 6(3)(a) of the Employment of Educators Act recommend candidates from this closed list for appointment to such vacant posts after following the procedures provided for in sections 6 and 7 of the Employment of Educators Act, and PAM. Thereafter the employer shall act in terms of sections 6 and 7 of the Employment of Educators Act.
- Before transferring an educator to a specific school, the employer must first give the educator an opportunity to make representations about the intended transfer to that specific school. The educator need not be given an oral hearing. An opportunity to make written representations within a specific time frame, which may not be less than 5 working days, is sufficient. The opportunity to make representations, may at the election of the employer be given before or after a school governing body has recommended the transfer of such educator to their school.
- Before making the final decision to transfer an educator to a specific school, the employer shall consider any family responsibilities of the educator which the educator has brought to the employer's attention in his written representations. Although the employer must consider such family responsibilities that may have been raised by the educator during any representations he may have made, the ultimate

and overriding factor that is of importance when making a decision about a transfer, always remain the operational requirements of the employer.

- 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.
- f) During any ELRC arbitration proceedings about the enforcement, interpretation or application of this collective agreement, an arbitrator appointed by the ELRC shall have jurisdiction to set aside the decision of the employer to transfer an educator to a specific school and refer the decision back to the employer for a fresh decision if:
- i) The educator has not been given an opportunity to make representations about the specific school to which the employer intends to transfer the educator; or
  - ii) The educator has not been given reasonable notice of the date on which he must report for duty at a school to which he has been transferred; or
  - iii) The employer has failed to apply his mind to the family responsibilities of the educator that the educator has brought to the attention of the employer, or has otherwise acted irrationally in this regard. In determining whether the employer has acted irrationally in this regard the arbitrator shall consider
    - the fact that the operational requirements of the employer remain the ultimate and overriding factor to be considered when deciding on a transfer;
    - the best interests of learners in the province;
    - the extent of the remoteness of the school to which the educator has been transferred;
    - the educator's situation of childcare or care for family members;
    - the availability of any alternative means to care for a child or a family member left behind as a result of the transfer;

- the fact that an educator who has been declared in addition must be transferred to another place of work;
- the fact that an employer may in terms of legislation only transfer an educator permanently to a school where the governing body is willing to recommend his appointment, which limits the employer's choices when deciding on transfers;
- any other relevant factor.

g) An ELRC arbitrator who arbitrates a dispute about the interpretation, application or enforcement of this collective agreement shall:

- i) not have any jurisdiction to determine where an educator shall be transferred to as this falls within the prerogative of the employer;
- ii) not have jurisdiction to award compensation;
- iii) not set aside the decision of the employer unless the conduct of the employer has prejudiced the employee;
- iv) only interfere with the decision of the employer and set it aside where the conduct of the employer was irrational.