



Province of the  
**EASTERN CAPE**  
EDUCATION

**OFFICE OF THE SUPERINTENDENT-GENERAL**

Steve Vukile Tshwete Complex, Zone 6 Zwelitsha, 5608, Private Bag X0032, Bhisho, 5605 REPUBLIC OF SOUTH AFRICA: \* Website: [www.ecdoe.gov.za](http://www.ecdoe.gov.za)

**HUMAN RESOURCE MANAGEMENT CIRCULAR 31/2016**

<b>TO:</b>	DEPUTY DIRECTORS-GENERAL CHIEF DIRECTORS DISTRICT DIRECTORS DEPUTY DIRECTORS: HRA & P EDUCATION DEVELOPMENT OFFICERS PRINCIPALS OF SCHOOLS CHAIR PERSONS: SCHOOL GOVERNING BODIES PROVINCIAL SECRETARIES: LABOUR UNIONS
<b>FROM</b>	ACTING HEAD OF DEPARTMENT
<b>SUBJECT:</b>	IMPLEMENTATION OF 2017- PPN

1. It is with pleasure that it can be announced that, through negotiations, the dispute between the Department and the South African Democratic Teachers Union (SADTU) regarding the implementation of Chapter B6 of the Personnel Administrative Measure (PAM) (ELRC Collective Agreement 2 of 2003 **as replaced** by Collective Agreement 4 of 2016 dated 23 August 2016), was resolved this morning by the signing of an Agreement by the parties in Grahamstown. For the information of Stakeholders attached hereto please find copies of the following:
  - 1.1 Grahamstown High Court Order dated 11 October 2016
  - 1.2 Settlement Agreement signed by the Parties
  - 1.3 Annexure A to the Settlement Agreement (**2017 PPN Management Plan**)
2. In the spirit of cooperation and to strengthen the delivery of quality, effective and efficient education to the learners of our province, the parties not only confirmed the Constitutional Rights of our Learners, but also agreed to work together to implement the 2017-PPN according to a very tight timeframe, resolve disputes through an expedited arbitration process and to follow a facilitated relationship building process to address relationships between the provincial office bearers of SADTU and management officials of the Department.



Province of the  
**EASTERN CAPE**  
EDUCATION

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3. The Department wishes to thank SADTU for assisting to resolve the issues. The Judge commended both parties on reaching a comprehensive settlement agreement.
4. The Department hereby also confirm its commitment to deal with the identification and redeployment of additional Educators strictly in accordance with the provisions of ELRC Collective Agreement 4 of 2016 dated 23 August 2016. A copy of the Agreement is also attached for ease of reference. All stakeholders are accordingly advised to familiarised themselves with the content of the Agreement.

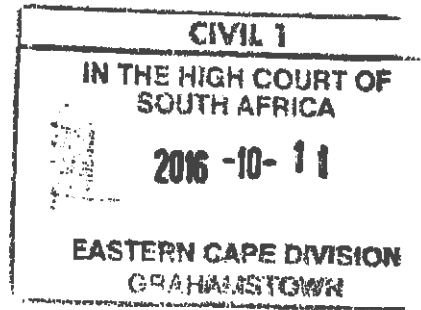
Your cooperation in ensuring that the content of this Circular is communicated to all Educators is highly appreciated. I encourage all management structures of the Department to study the 2017-PPN, Management Plan and Collective Agreement 4 of 2016 in order to support our schools and learners.

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**ACTING HEAD OF DEPARTMENT  
MS. S.N. NETSHILAPHALA**

**DATE: 11 OCTOBER 2016**

CASE NO: 3760/2016  
IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN  
11<sup>th</sup> OCTOBER 2016  
BEFORE THE HONOURABLE MR. JUSTICE PLASKET  
IN THE MATTER BETWEEN:



**HEAD OF DEPARTMENT OF EDUCATION,  
EASTERN CAPE PROVINCIAL GOVERNMENT**

**APPLICANT**

**AND**

**SOUTH AFRICAN DEMOCRATIC  
TEACHERS UNION**

**1<sup>st</sup> RESPONDENT**

**THE PRESIDENT OF THE SOUTH AFRICAN  
DEMOCRATIC TEACHERS UNION**

**2<sup>nd</sup> RESPONDENT**

**THE GENERAL SECRETARY OF THE  
SOUTH AFRICAN DEMOCRATIC TEACHERS  
UNION**

**3<sup>rd</sup> RESPONDENT**

**SINDISILE ZAMISA**

**4<sup>th</sup> RESPONDENT**

Having heard Adv. Magardie, Counsel for the Applicant and Adv. Watt, Counsel for the Respondents and having read the Notice of Motion and other documents filed of record

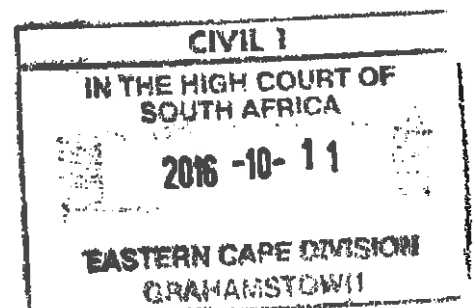
**IT IS ORDERED: (BY AGREEMENT)**

1. THAT paragraph 1 of the settlement agreement attached hereto dated the 11<sup>th</sup> October 2016 at Grahamstown be and is hereby made an Order of Court.

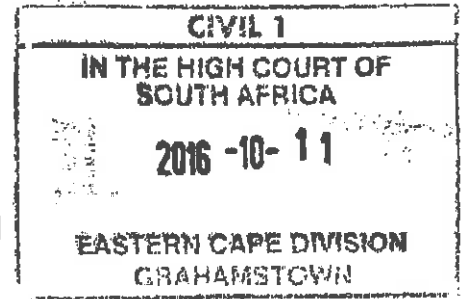
**BY ORDER OF COURT**

A handwritten signature in black ink, appearing to read "N. BIKITSHA".

**N. BIKITSHA  
COURT REGISTRAR  
NN DULLABH & CO**



**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN**



**Case No: 3760/16**

In the matter between:

**HEAD OF DEPARTMENT OF EDUCATION,  
EASTERN CAPE PROVINCIAL GOVERNMENT**

**Applicant**

And

**SOUTH AFRICAN DEMOCRATIC TEACHERS'**

**First Respondent**

**THE PRESIDENT OF THE SOUTH AFRICAN  
DEMOCRATIC TEACHERS' UNION**

**Second Respondent**

**THE GENERAL SECRETARY OF THE SOUTH  
AFRICAN DEMOCRATIC**

**Third Respondent**

**SINDISILE ZAMISA**

**Fourth Respondent**

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**SETTLEMENT AGREEMENT**

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1 The Applicant and the Respondents agree to the following being made an order of court:

1.1 The Respondents agree to the orders 2, 3, 4, 5, 6, 7 (read with annexure A attached hereto) 9 and 10 in the Notice of Motion dated 28 July 2016;

1.2 Each party pays its own costs in respect of this application (Case No. 3760/16);

*SW* *PS*  
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1.3 The Applicant withdraws its second application under Case No. 3791/16 and the Respondents abandon their cost order.


2 The Department of Basic Education Eastern Province and SADTU enter into the following collective agreement:

2.1 SADTU recognises everyone's right to basic education and that SADTU, its office bearers and members have a constitutional and statutory obligation to promote the right and not to infringe it;

2.2 Subject to SADTU's right to declare a dispute in accordance with the expedited dispute procedure contemplated in this collective agreement, SADTU agrees to the post provisioning processes for the years 2018, 2019 and 2020 as determined by the MEC and the Superintendent-General and undertakes on behalf of its office bearers and members to cooperate in implementing those processes;


2.3 Any dispute arising from the interpretation, application or implementation of this collective agreement is referred to expedited and binding arbitration by an agreed arbitrator under the auspices of Education Labour Relations Council ("ELRC") provided that the arbitrator may be appointed from persons outside the panel and any fees additional to the fees paid by the ELRC must be paid by the Department of Education. The obligation to refer a dispute to arbitration does not prevent either parties from approaching any Court for relief on an urgent basis;

2.4 An arbitrator is agreed within 10 working days of this collective agreement, failing which the Director of Tokiso (Pty) Ltd will choose the

  
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arbitrator and the Secretary of the ELRC must appoint that person as the arbitrator.

- 2.5 A procedure for the determination of disputes is agreed within 10 working days of this collective agreement, failing which the agreed arbitrator determines the procedure, which procedure must be informal, expeditious, primarily determined through written submissions and may include the appointment of a national official of SADTU and an official of the Department as assessors;
- 2.6 SADTU agrees not to strike, picket or engage in any protest action in respect of any dispute contemplated in terms of this collective agreement and to ensure that its officials do not call or condone such action;
- 2.7 The applicant undertakes to ensure that management will respect the rights of the first respondent and its members under the Constitution and any employment or education legislation.
- 2.8 The applicant undertakes to provide the first respondent with a progress report on the implementation of the settlement agreement dealing with the 1665 additional posts in the Eastern Cape.
- 2.9 The applicant undertakes to ensure that all outstanding transfers and cross transfers of teachers are processed and completed within the time periods contemplated in the 2017 PPN management plan.
- 2.10 An agreed facilitator is appointed to initiate and facilitate a process known as Relationship by Objectives (RBO) to address the deteriorating relationship between the provincial office bearers and officials of the

  
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provincial department, and the parties permitted to raise any issue affecting their relationship.

2.11 The facilitator appointed to facilitate the RBO will deal any issue that the parties may wish to raise that have affected their relationship.

2.12 That facilitator must be agreed within 15 days of this collective agreement, failing which the Director of Tokiso (Pty) Ltd chooses the facilitator and the secretary of the ELRC must appoint that person as a facilitator.

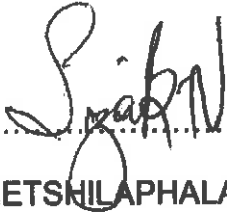
2.13 The first meeting of the RBO must take place within 25 working days of this collective agreement unless the facilitator, after consultation with SADTU and the Department, determines otherwise.

2.14 The costs of the the facilitator will be borne by the ELRC according to their rates. If there is any difference between the amount paid by the ELRC and the cost of the service, such difference will be paid by the Department of Education.

2.15 This clause 2 of the settlement agreement constitutes a collective agreement for the purposes of the Labour Relations Act and may not be terminated before 11 October 2020.

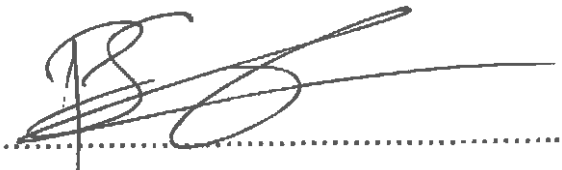
Signed on 11 October 2016 at Lyabonistoren

  
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S.N.NETSHILAPHALA  
ACTING SUPERINTENDENT GENERAL  
EASTERN CAPE DEPARTMENT OF EDUCATION

Signed on ..11.. OCTOBER 2016..... at GRAHAMSTOWN.....



.....  
PHILLIP SOBI MASILO  
CHEADLE THOMPSON & HAYSOM  
ATTORNEYS DULY AUTHORISED TO SIGN ON BEHALF OF THE FIRST TO  
THIRD RESPONDENTS

Signed on ..... at .....

.....  
PHILLIP MASILO



Signed on ..... 11 October 2016 ..... at ..... GRAHAMSTOWN .....

  
.....

SINDISILE ZAMISA

FOURTH RESPONDENT

  
S.C.Z



**EASTERN CAPE  
DEPARTMENT OF EDUCATION**

Physical Address: Steve Vukile Tshwete Education Complex, Zone 6, Zwelitsha,  
Postal Address: Private Bag X 0032, Bhisno, 5606. REPUBLIC OF SOUTH AFRICA.

**CIVIL 1**

**IN THE HIGH COURT OF  
SOUTH AFRICA**

**2016 -10- 11**

**EASTERN CAPE DIVISION  
GRAHAMSTOWN**

**ANNEXURE A**


**2017 PPN MANAGEMENT PLAN**

NO	ACTIVITY	TIMEFRAME	RESPONSIBILITY	STATUS
	Internal preparatory meeting for Information sharing and Budget workshop PPN 2017 consultation	22 June 2016	HOD/CFO/DDG –IOM/Chief Dir. HRM&D and Post Provisioning TT	Done
	1 <sup>st</sup> Budget Workshop on 2017 Post Provisioning – Labour Unions and SGB Associations	28 July 2016	A/CFO and Post Provisioning TT	Done
	2 <sup>nd</sup> Budget Workshop on PPN 2017--Social Partners	12 August 2016	A/CFO and Post Provisioning TT	Done
	Special chamber meeting (Postponed due to quorum)	12 August 2-16	PELRC	Done
	Interaction with Secretary general of the ELRC and notice to PELRC Prov. Manager for First PPN 2017 Consultation session	15 August 2016	HRM&D/HRP&PS	Done
	Briefing the MEC on PPN 2017 updates before consultation	15 August 2016	HRM & D/ Technical Task Team	Done
	1 <sup>st</sup> Consultation Sessions with PELRC Parties & SGBs	18 August 2016	MEC	Done
	Principle for creation of posts by the MEC in 2017			
	2 <sup>nd</sup> Consultation Sessions with PELRC Parties & SGBs on creation of posts by MEC and Declaration of posts basket	22 September 2016	MEC	Done
	1 <sup>st</sup> Consultation on distribution workshop on PPN 2017 to PELRC Parties & SGBAs	30 September 2016	A/HOD	Done
	2 <sup>nd</sup> Consultation sessions with PELRC Parties and SGBAs	6 October	A/HOD	Done
	Issuing of 2017 Post Establishment to Districts	7 October 2016	HRP & PS	Done
	Issuing of 2017 Post Establishment to Schools	10 October 2016	District Directors	Done
	Submission of applications for additional posts to Head Office	17 October 2016	District Directors	
	Committee Meeting to consider additional post applications	19 October	HO	
	Projection of additional educators and vacancies based on 2017 Post Establishments versus permanent employees.	20 October 2016	HRP & PS	

NO	ACTIVITY	TIMEFRAME	RESPONSIBILITY	STATUS
	Issuing of responses to additional post applications including revised 2017 Post Establishment (if applicable) to District Offices	24 October 2016	HRP & PS	
	Issuing of responses to additional post applications including revised 2017 Post Establishment (if applicable) to Schools	25-26 October 2016	District Directors School Principals	
	School Principals inform staff of the 2017 Post Establishment allocations and staffing implications in terms of CA 2 of 2003 <sup>2016</sup> <del>2003</del> Refer to CA 2 of 2003 clause 2.4(f) Identification of educators additional to the staff establishment including <ul style="list-style-type: none"> <li>- Issuing of declaration letters to identified educators</li> <li>- Collection of additional educator profiles (teaching subjects, phase, qualifications) <sup>4</sup> <sub>2016</sub></li> </ul> Refer to CA 2 of 2003 clause 2.4(f)	27-28 October 2016	School Principals & school staff	
	Post matching of additional educators to suitable vacancies including the issuing of placement letters (where applicable)	31 October - 4 November 2016	School Principals, EDO and Union Rep as Observer	
	Submission of information to Head Office on: (a) Additional educators with profiles per ECDE Post Prov. Form 1.4(F) (b) Vacancies with profiles per ECDE Post Prov. Form 1.4(G) (c) Placement of additional educators on PERSAL per ECDE Post Prov. Form 1.4(H) (d) Summary for all additional educators, all vacancies and all placed educators per ECDE Post Prov. Form 1.4(I)	7 - 11 November 2016	District Director/DDT's	
	Creation of the database of: - additional educators profiles; subcategorised into "Unplaced" and "Placed"	14 - 18 November 2016	District Directors	
		21 -25 November 2016	Dir: HRP & PS	

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NO	ACTIVITY	TIMEFRAME	RESPONSIBILITY	STATUS
	- vacancies			
	Issuing of a Closed Vacancy list of PL1, PL2 and PL3 posts for Additional educators and First Time Entrants	8 November 2016 – 15 January 2017	Dir: HRA	
	PERSAL Establishment Maintenance	5 - 15 December 2016	HRP & PS	
	- 2017 establishments captured on PERSAL (posts abolished and created)			
	- Movement of redeployed additional educators			
	- Marking of declared additional educators			
	Issuing of Open Vacancy List with preferential placement of additional educators and first time entrants to the teaching profession.	31 January 2017	Dir. HRA	
	Redeployed additional educators report to receiving schools and approval of the use of temporary educators in substantive vacant posts until they are filled.	1 January 2017	Dir. HRP & PS/ District Directors/ DD HRP/A/ EDOs/ school principal	
	Weekly Progress report to Head Office	Fortnightly (Thursdays)	District Directors / HRP & PS	
	PPN Report to the PELRC meeting	February 2017	Chief Dir. HRM&D/ PPN T. Team	

  
S. G. Z

IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN

Case No.:

In the matter between:

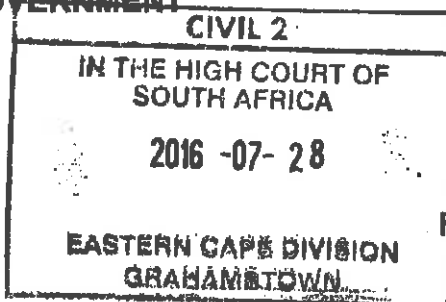
3760/16

HEAD OF DEPARTMENT OF EDUCATION,  
EASTERN CAPE PROVINCIAL GOVERNMENT

Applicant

and

SOUTH AFRICAN DEMOCRATIC  
TEACHERS UNION



First Respondent

THE PRESIDENT OF THE SOUTH AFRICAN  
DEMOCRATIC TEACHERS UNION

Second Respondent

THE GENERAL SECRETARY OF THE SOUTH  
AFRICAN DEMOCRATIC TEACHERS UNION

Third Respondent

SINDISILE ZAMISA

Fourth Respondent

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NOTICE OF MOTION

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TAKE NOTICE THAT application will be made on behalf of the Applicant at 10h00

*Tuesday 23 August*  
on ~~Thursday 4 September~~ 2016 or as soon thereafter as counsel may be heard, for

an order in the following terms:

1. That the Applicant's non-compliance with the forms and service provided for in the rules of this Honourable Court is condoned and that this application is heard as one of urgency;

CERTIFIED TO BE A TRUE  
COPY OF THE ORIGINAL

MARIUS WOLMARANS  
COMMISSIONER OF OATHS  
5 BERTRAM STREET  
GRAHAMSTOWN 6140  
PRACTISING ATTORNEY, R.S.A.

2. Declaring that the First Respondent is under a constitutional duty to respect, protect, promote and fulfil the rights of children to basic education and not to interfere with, obstruct or impede the carrying out of the constitutional duty of the Eastern Cape Department of Education ('the Provincial Department') to provide effective basic education to all learners in the Eastern Cape province, including though the implementation of post provisioning;
3. Declaring that section 29(1)(a) of the Constitution requires the First Respondent, its officials and its members to co-operate with the Applicant's implementation of the Personnel Administrative Measures ("PAM") determined by the Minister of Basic Education in terms of section 4 of the Employment of Educators Act 76 of 1998 and published in Government Notice No 170 *Government Gazette* No. 39684 dated 12 February 2016;
4. Declaring the First and Fourth Respondents' notice of 6 April 2016 to SADTU members directing them not to participate in the process of providing a staff profile of vacancies and educators in excess of the post establishment determined by the Applicant, to be unlawful, inconsistent with the Constitution and a continuing breach of the constitutional rights of learners to effective education;
5. Interdicting the First and Fourth Respondents from impeding, interfering with or obstructing the Applicant's implementation of the PAM for the determination of an educator post establishment at public schools and the transfer of serving educators for operational requirements;

6. Interdicting the First and Fourth Respondents from engaging in any unlawful occupation of offices and obstruction of access to or egress from offices of the Provincial Department, which has the effect of preventing or hindering the Provincial Department in carrying out its obligations in terms of sections 5, 6A and 8 of the Employment Educators Act 76 of 1998 and the PAM in so far as those provisions deal with post provisioning processes and redeployment;
  
7. Directing the Second and Third Respondents within 5 (five) days of the date of this order and in writing to:
  - 7.1 inform members of the First Respondent in the Eastern Cape province that they are required to comply with the PAM and items 13, 14, 15 and 16 of the revised PPN 2016 Management Plan attached to the Applicant's Founding Affidavit as annexure "SN9" and according to the schedule attached to the Notice of Motion as Annexure "X";
  
  - 7.2 bring the contents of this order to the attention of members of the First Respondent in the Eastern Cape province
  
8. Directing the Second and Third Respondents to take all necessary measures to ensure that the First Respondent institutes disciplinary proceedings in accordance with its constitution against the Fourth Respondent arising from his issuing of the notice dated 6 April 2016 referred to in paragraph 4 of this order;

9. Directing the Second and Third Respondents to file a report with this Court within 2 (two) weeks of the date of this order, such report to be confirmed on affidavit, on the steps which they have taken to comply with this order;
10. Granting the Applicant leave to approach this Court on notice to all parties and on duly supplemented papers to seek further appropriate relief in respect of any failure to comply with this order by the respondents or the failure by members of the First Respondent to comply with the requirements of paragraph 7.1 of this order read with annexure "X" to the notice of motion.
11. Directing the First and Fourth Respondents and any respondent opposing this application to pay the costs of this application including the costs of two counsel.
12. Further and/or alternative relief.

**TAKE NOTICE THAT** the affidavit of **SIZAKELE NETSHILAPHALA** together with the annexures thereto, will be used in support of this application.

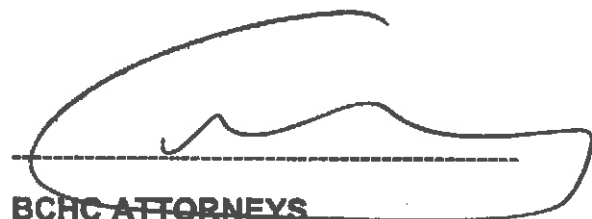
**TAKE NOTICE FURTHER** that if any of the Respondents intend opposing the application, they are required to (a) notify Applicant's attorney in writing and (b) file their answering affidavits, if any, within 10 (ten) days of service of this application upon them.



**TAKE NOTICE FURTHER** that any respondents opposing this application are required to appoint in such notification an address referred to in rule 6(5)(b) at which they will accept notice and service of all documents in these proceedings.

**TAKE NOTICE FURTHER** that the Applicant has appointed the offices of Dullabh Attorneys, 5 Bertram Street, Grahamstown (tel: 046: 6226611 / fax: 046: 6361350 / Ref: Mr M Wolmarans) as the address at which it will accept notice and service of all process in these proceedings.

**DATED AT CAPE TOWN ON THIS 28<sup>th</sup> DAY OF JULY 2016**



**BCHC ATTORNEYS**

Applicant's Attorneys

G04 The Gatehouse

Century Way, Century City

Cape Town

Tel: 021 4182196

Fax: 921: 4182197

(Ref: Mr H Cheadle)

Care of **DULLABH ATTORNEYS**

5 Bertram Street

Grahamstown

Tel: 046: 6226611

Fax: 046: 6361350

(Ref: Mr M Wolmarans)

To:

**THE REGISTRAR**

High Court  
Grahamstown

And to:

**SOUTH AFRICAN DEMOCRATIC TEACHERS UNION**

First Respondent  
Matthew Goniwe House  
49 Goud Street  
Johannesburg  
2000

And to:

**THE PRESIDENT OF THE SOUTH AFRICAN DEMOCRATIC TEACHERS UNION**

Second Respondent  
Matthew Goniwe House  
49 Goud Street  
Johannesburg  
2000

And to:

**THE GENERAL SECRETARY OF THE SOUTH AFRICAN DEMOCRATIC  
TEACHERS UNION**

Third Respondent  
Matthew Goniwe House  
49 Goud Street  
Johannesburg  
2000

And To:

**SINDISILE C ZAMISA**

Fourth Respondent

Simphiwe W Mnguni House, Block B

Unit 10 and 11, Bisho Business Village

Siwani Avenue

Bhisho.

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



**elrc**

EDUCATION LABOUR  
RELATIONS COUNCIL

# **COLLECTIVE AGREEMENT NO. 4 OF 2016**

**23 August 2016**

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

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*Education Labour Relations Council*  
261 West Avenue  
CENTURION  
0046

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**EDUCATION LABOUR RELATIONS COUNCIL**

**COLLECTIVE AGREEMENT NO 4 OF 2016**

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

**1. PURPOSE OF THIS AGREEMENT**

The purpose of this agreement is to replace the provisions of Collective Agreement 2 of 2003 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 educators of the employer as defined in the Employment of Educators Act, 1998 (as amended) whether such educators 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 2003.

3.2 Regulations regarding the creation of educator posts in a provincial department of education and the distribution of such posts to the educational institutions of such a department (government notice No 1676 published in government gazette No 19627 dated 18 December 1998 as amended).

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

4.1 To request the Minister of Education to amend paragraph B.6 of Chapter B of the Personnel Administrative Measures by including the attached document (Annexure A).

**5. DATE OF IMPLEMENTATION**

This agreement shall, in respect of 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 **"educator"** 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.

THUS DONE AND SIGNED AT CENTURION THIS THE 23<sup>rd</sup> DAY OF August 2016

**ON BEHALF OF THE STATE AS THE EMPLOYER**

DEPARTMENT	NAME	SIGNATURE
BASIC EDUCATION	H.M. MUSEEN	

**ON BEHALF OF THE EDUCATOR PARTIES**

TRADE UNION	NAME	SIGNATURE
"SADTU"	Mugwena Maluleke	
CTU "ATU"		JC KROPPER

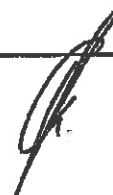
## ANNEXURE A

### B.6 TRANSFER OF SERVING EDUCATORS IN TERMS OF OPERATIONAL REQUIREMENTS

- B.6.1 Operational requirements for education institutions are based on, but not limited to the following:
- B.6.1.1 Change in learner enrolment.
- B.6.1.2 Curriculum changes or a change in learners' involvement in the curriculum.
- B.6.1.3 Change to the grading or classification of an institution.
- B.6.1.4 Merging or closing of institutions.
- B.6.1.5 Financial constraints.
- B.6.2 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.
- B.6.3 Each principal must inform his/her staff of the institution's new educator post establishment and of the procedure, as set out in the 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.
- B.6.4 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:
- B.6.4.1 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.

- B.6.4.2** 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:
- B.6.4.2.1** The views of the educator staff of the institution as expressed at a formal meeting convened by the principal;
- B.6.4.2.2** 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;
- B.6.4.2.3** 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;
- B.6.4.2.4** 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.
- B.6.4.2.5** One representative per trade union party to the ELRC shall be invited by the District/Circuit Manager to observe the process.
- B.6.4.3** An educator who has been identified as in additional shall be so informed, in writing, by the Provincial Education Department concerned.
- B.6.5** The following procedure shall be followed in filling vacancies in cases where a department has educators in addition of a staff establishment:
- B.6.5.1** 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.
- B.6.5.2** 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.





- B.6.5.3** 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.
- B.6.5.4** In the event the educator fails to make a choice, the employer reserves the right to make a choice on behalf of such educator.
- B.6.5.5** 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.
- B.6.5.6** 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.
- B.6.5.7** 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.
- B.6.5.8** 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.
- B.6.5.9** 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.
- B.6.6** 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.
- B.6.7** 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.
- B.6.8** 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.

**B.6.9 The Role of the Arbitrator in Respect to the Process Above:**

**B.6.9.1** During any ELRC arbitration proceedings about the enforcement, interpretation or application of the measures outlined above, 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:

**B.6.9.1.1** 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

**B.6.9.1.2** The educator has not been given reasonable notice of the date on which he/she must report for duty at a school to which he/she has been transferred; or

**B.6.9.1.3** The employer has failed to apply his/her mind to the representation e.g. personal circumstances 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 amongst others consider the following:

**B.6.9.1.3.1** the fact that the operational requirements of the employer remain the ultimate and overriding factor to be considered when deciding on a transfer;

**B.6.9.1.3.2** the best interests of learners in the province;

**B.6.9.1.3.3** the extent of the remoteness of the school to which the educator has been transferred;

**B.6.9.1.3.4** the educator's situation of childcare or care for family members;

**B.6.9.1.3.5** the availability of any alternative means to care for a child or a family member left behind as a result of the transfer;

**B.6.9.1.3.6** the fact that an educator who has been declared in addition must be transferred to another place of work;

- B.6.9.2** An ELRC arbitrator who arbitrates a dispute about the interpretation, application or enforcement of the measures outlined above shall:
- B.6.9.2.1** not have any jurisdiction to determine where an educator shall be transferred to as this falls within the prerogative of the employer; and
- B.6.9.2.2** not have jurisdiction to award compensation

