

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



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DRAFT COLLECTIVE AGREEMENT

NUMBER X OF 2017

**CONVERSION OF EDUCATORS ON CONTRACT INTO
EMPLOYMENT ON A PERMANENT BASIS IN PUBLIC
EDUCATION**

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COLLECTIVE AGREEMENT NO X OF 2017

CONVERSION OF EDUCATORS ON CONTRACT INTO EMPLOYMENT ON A PERMANENT BASIS IN PUBLIC EDUCATION

1. OBJECTIVES

- 1.1. To provide for an equitable dispensation for the conversion of educators on contracts into employment on an indefinite basis in public education as outlined in section 6B of the Employment of Educators Act 76 of 1998; and
- 1.2. To provide for an equitable dispensation for the prevention of less favourable treatment of educators employed on contract into employment on a permanent basis in public education as outlined in section 6B of the Employment of Educators Act 76 of 1998.

2. LEGAL FRAMEWORK

The legal framework applicable includes and is not limited to the following:

- 2.1. The Constitution of the Republic of South Africa
- 2.2. ILO Convention on the Termination of Employment, 1982 (C 158)
- 2.3. The Labour Relations Act No 66 of 1995, as amended
- 2.4. Employment of Educators Act No 76 of 1998
- 2.5. Personnel Administrative Measures (PAM)
- 2.6. South African Schools Act 84 of 1996
- 2.7. ELRC Collective Agreement 4 of 2016

3. THE PARTIES NOTE AS FOLLOWS THAT:

- 3.1. ILO Convention 158 of 1998 provides that adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection provided against unfair dismissals;
- 3.2. The public education sector is a unique sector that requires a unique approach as regards the dispensation applicable to educators employed on contract into employment on an indefinite basis;

- 3.3. Section 6 of the Employment of Educators Act, 1998 provides that any appointment, promotion or transfer to the post establishment of a public school may only be made on the recommendation of the governing body of that school;
- 3.4. Jurisprudence has determined that any appointment of an educator made at a public school without a recommendation from a school governing body as contemplated by section 6 of the Employment of Educators Act, is unlawful and invalid;
- 3.5. Section 6 of the Employment of Educators Act, 1998, provides that appointments, promotions and transfers to posts on the post establishment of a public school must be made in accordance with the procedures provided for in the Employment of Educators Act; Personnel Administrative Measures, and collective agreements;
- 3.6. Section 6 of the Employment of Educators Act is not always complied with when appointing educators on fixed term contracts, in that the collectively agreed procedures for appointment are not followed and the recommendation of the school governing body not obtained, with the result that the automatic conversion of such fixed term contracts into permanent appointments, would be in contravention of section 6 of the Employment of Educators Act and the South African Schools Act; and
- 3.7. Section 6B of the Employment of Educators Act, 1998 allows the Head of Department after consultation with the Governing Body of a Public School to convert the temporary appointment of an educator appointed to a post on the educator establishment of the Public School into a permanent appointment in that post.

4. PROVINCIAL AGREEMENTS ON SECTION 6B OF EEA

- 4.1. This collective agreement repeals all provincial collective agreements dealing with the conversion from temporary employment to that of permanent in terms of section 6B of the Employment of Educators Act 76 of 1998.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**PART 1
GENERAL AND INTERPRETATION**

5. SCOPE

This agreement applies to and binds:

- 5.1. The employer and
- 5.2. All employees of the employer as defined in the Employment of Educators Act, 1998, employed as school based educators, whether such employees are members of Trade Union parties to this agreement or not.

6. DEFINITIONS AND INTERPRETATION

- 6.1. **"Temporary educator"**, is an educator who is currently appointed to an approved substantive vacant Post Level 1 post in a specific school in a temporary capacity for a fixed term.
- 6.2. **"Educator employed on contract"** means a contract of employment that terminates on
 - (i) the occurrence of a specified event; or
 - (ii) the completion of a specified task or a fixed date; or
 - (iii) a fixed date, other than the employee's normal or agreed retirement age.
- 6.3. **"Permanent educator"**, means an educator who is employed on an indefinite contract.
- 6.4. **"Permanency"**, **"permanent employment"** and **"indefinite employment"** shall have the same meaning in this collective agreement.
- 6.5. **"Conversion"**, a process where a Post Level 1 educator who was appointed in a temporary capacity for a fixed term translates into permanent status in

an approved substantive vacant post in a specific school without such post being advertised.

Whenever a personal pronoun is used herein, it is understood that such usage shall include singular and plural, masculine, feminine and neuter and refer in appropriate cases to juristic persons as well as natural persons.

PART 2

7. CONVERSION OF FIXED TERM EMPLOYMENT INTO PERMANENCY OF SCHOOL BASED EDUCATORS

- 7.1. Section 6B of the Employment of Educators Act provides for the conversion of the appointment status of educators from temporary/contract to permanent.
- 7.2. For the purpose of this section a temporary educator is an educator who is currently appointed to an approved substantive vacant Post Level 1 post in a temporary capacity for a fixed term at a specific school.
- 7.3. The definition as outlined in section 6B of the EEA does not apply to educators that:
 - 7.3.1. Are appointed to vacant substantive promotion posts in an acting capacity, or to substitutes for permanently employed educators who are absent from duty, for whatever reason.
 - 7.3.2. Have already had the opportunity of an extensive career in education, those who have early retirement (in any category), been discharged because of ill-health or taken a severance package of whatever nature are excluded from the measures contained in this collective agreement. For example:
 - 7.3.2.1. For early retirees: permission from HOD to be considered for reappointment;
 - 7.3.2.2. For those been discharged for ill-health: provide proof of medical clearance and the approval of the HOD; and

- 7.3.2.3. For those that have taken a severance package: permission from HOD to be considered for reappointment.
- 7.3.3. Have resigned from the education profession (national or provincial). They may only be considered for the conversion on the proviso that 8.7. below is applied.
- 7.3.4. Are excluded from the measures contained in this agreement in accordance with Section 10 of the Public Service Act:
 - 7.3.4.1. Foreign educators who do not have a SA citizenship or who are not permanent residents of South Africa as defined in the Immigration Act No. 13 of 2002; and
 - 7.3.4.2. Foreign educators who are not fit and proper persons as intended in Section 10 of the Public Service Act.
- 7.4. The general criteria established for the conversion of the appointment status of educators from temporary to permanent in terms of Section 6B of the EEA, 1998 stipulates that the following conditions must be met:
 - 7.4.1. Only funded vacant substantive posts identified for filling by the provincial education departments for conversion may be filled on this basis.
 - 7.4.2. The permanent appointment must be made to a vacant substantive Post Level 1 post and the post must reflect in the approved educator staff establishment of the school.

8. ADVERTISEMENT OF TEMPORARY / CONTRACT POST

- 8.1. The procedures outlined in the ELRC Collective Agreement 5 of 1998 (PAM Chapter B5 – Government Gazette No. 39684) shall not be applicable to conversion of temporary educators to permanent posts.
- 8.2. In the event that any funded substantive post(s) would become available at a particular school, the Governing Body of such school is required to

advertise the post at school/district/circuit level for temporary filling to allow for:

- 8.2.1. The principle of fair competition to apply and,
 - 8.2.2. To curb any malpractices before and prior to the permanent filling of the vacant substantive post.
- 8.3. The advertisement for temporary appointments will only be considered if accompanied by confirmation in writing from the School Governing Body and Principal provided that there are no:
- 8.3.1. Educators in addition available;
 - 8.3.2. Educators who have received departmental bursaries; and
 - 8.3.3. First time appointment.
- 8.4. The recruitment process in relation to the filling of the substantive vacant post(s) on a temporary basis prior to permanent filling shall be completed within 10 days after such post has been advertised on school level and became known. The rationale behind such recruitment process is to ensure:
- 8.4.1. Reasonableness,
 - 8.4.2. Fairness, and
 - 8.4.3. That quality teaching and learning at educational institutions is not compromised.
- 8.5. Where a vacant substantive post(s) needs to be filled urgently on a temporary or contract basis, such appointment may not exceeding a fixed period of 90 days and need not to follow the procedure as outlined in 8.2 above.

Notwithstanding the afore-mentioned provisions, provinces have discretionary power to advertise and fill such posts through the normal recruitment and selection process.

9. CONVERSION PROCEDURES TO FOLLOW:

- 9.1. Subject to the afore-mentioned provisions, the educator concerned must at the time of applying for conversion been employed in a temporary capacity for a continuous period of at least three (3) months subject to the recommendation of the School Governing Body as contemplated in section 6B.
- 9.2. It will be the responsibility of school principals to profile the substantive posts occupied by temporary employees and submit such to the District for permanent conversion.
- 9.3. In addition to the general criteria established the following criteria need to be adhered to in order to be considered for the conversion of his/her temporary/contract status to permanent:
 - 9.3.1. Be professionally qualified for the education profession;
 - 9.3.2. Meet the inherent requirements of the post in which his or her conversion of appointment will be made;
 - 9.3.3. Be registered with the South African Council of Educators (SACE); and Educators who resigned from the education profession (national or provincial) may only be considered for the conversion of their appointment status from temporary/contract to permanent after considering 8.2 above.
- 9.4. The conversion of a temporary appointment to a permanent appointment is subject to approval by the Head of Education.
- 9.5. The temporary educators whose posts have been converted to permanent will be subjected to a probation period of a year (12 months) after being made permanent.

10. LESS FAVOURABLE TREATMENT IN APPLICATION OF CONVERSION OF FIXED TERM EMPLOYMENT INTO PERMANENCY OF EDUCATORS

10.1. Subject to the provisions of this collective agreement and Section 6B of the EEA, no educator shall be treated by his employer less favourably than the other, in the conversion process of temporary appointment to a permanent appointment, unless there is an objective justifiable reason for such different treatment.

11. TRANSITIONAL ARRANGEMENTS

11.1. Educators currently appointed on a temporary/contract basis in substantive vacant Post Level 1 posts for 3 months or longer and whose contracts have not expired as at the signing of this agreement, qualifies to be considered for conversion in terms of Section 6B of the EEA subject to the above provisions.

12. DISPUTE RESOLUTION PROCEDURE

12.1. Any dispute about the interpretation or application of this agreement shall be dealt with according to the dispute resolution procedure of the ELRC.

13. DATE OF EFFECT

13.1. The provisions of this Collective Agreement shall take effect on the date of signing.

13.2. Signing of the Collective Agreement

Thus done and signed at _____ on the _____ day of _____ 2017.

ON BEHALF OF THE STATE AS EMPLOYER

DEPARTMENT	NAME	SIGNATURE
BASIC EDUCATION		

ON BEHALF OF EMPLOYEE PARTIES

TRADE UNION	NAME	SIGNATURE
SADTU		
CTU-ATU		