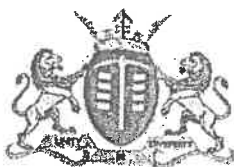


Foreign Educator
employment policy



GAUTENG PROVINCE
EDUCATION
REPUBLIC OF SOUTH AFRICA

Circular 02/2016
Date: 17 February 2016

Topic

EMPLOYMENT OF FOREIGN EDUCATORS

Annexures

- ✓ Annexure A: GDE 79 - Notice of Vacancies
- ✓ Annexure B: GDE 2R - Employment Profile Form
- ✓ Annexure C: GDE 01 - Application for Contract (Temporary) Appointment

Distribution

- ✓ All Chief Directors and Directors at Head Office as well as District Offices
- ✓ All District Directors
- ✓ All Employees at Head Office and District Offices
- ✓ All Principals and Staff members of schools
- ✓ All Members of the School Governing Body
- ✓ All Unions and Relevant Non-Governmental Organisations

Enquiries

Relevant THRS: HRP Officials in the Districts
Recruitment & Selection Directorate: Head Office

On request, this circular will be made available in IsiZulu, Sepedi and/or Afrikaans within 21 days.
It is also available on the GDE website at: www.education.gpg.gov.za

Office of the Head of Department
Room 1009, 111 Commissioner Street, Johannesburg, 2001
PO Box 7710, Johannesburg, 2000
Tel: (011) 355 1510/11 Fax: (011) 333 5546 / (011) 355 0542
E-mail: Joe.Mokhosi@gauteng.gov.za

1. INTRODUCTION AND BACKGROUND

The availability of suitably qualified teachers to fill all allocated posts is one of the critical priorities of the Gauteng Department of Education, linked to the principle of "no class without an educator". The department, in streamlining the processes of recruitment, utilisation and retention, prioritises the appointment of suitably qualified South African educators to match the profile of a vacancy, educators declared additional to the staff establishment, suitably placed temporary/contract educators, and placement of state-funded bursars.

This circular outlines the policy regarding the employment of foreign educators.

2. DEFINITIONS

2.1 **"A foreign educator"** – shall mean an immigrant, contemplated in the Immigration Act, who intends to work for or employed by the Gauteng Department of Education, as an educator, subject to meeting the applicable requirements.

2.2 **"Permanent resident"** – a foreign educator who has received permanent residency as contemplated in 25 (2) and Section 27 (a)(i) of the Immigration Act.

3. PURPOSE

The purpose of this document is to:

- 3.1 Streamline the process surrounding the principles and provisions that govern the Recruitment, Employment and Support of Foreign CS Educators in GDE.
- 3.2 Ensure that appointments of Foreign CS Educators at all times be subject to South African laws regulating the entry of foreigners into the Republic, their residence and employment status (inter alia, the Aliens Control Act, 1991 (Act No. 69 of 1991 and the Refugees Act 1998, (Act 130 of 1998)).
- 3.3 Adopt control measures to regulate employment of foreign educators to posts **categorised as critical shortage**.

4. LEGAL FRAMEWORK

The applicable legislative framework includes, and not limited to:

- 4.1 Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), as amended.
- 4.2 The Employment of Educators Act, 1998 (Act No. 76 of 1998), as amended.
- 4.3 The Immigration Act, 2002 (Act No. 13 of 2002, as amended).
- 4.4 South African Council for Educators Act, 2000 (Act No. 31 of 2000), as amended.
- 4.5 Employment Service Act, 2014 (Act No. 4 of 2014).
- 4.6 Norms and Standards for Educators, 2000 (Government Gazette 21565).
- 4.7 Personnel Administrative Measures, 1999, (Government Gazette 19767).

- 4.8 Labour Relations, 1995 (Act 66 of 1995), as amended.
- 4.9 Policy on the Minimum Requirements for Teacher Education Qualifications 2011 (Government Gazette 34467).
- 4.10 Relevant and/applicable ELRC collective agreements and PSCBC resolutions.
- 4.11 National Guidelines on the Employment of Foreign Educators in South Africa (November 2014).
- 4.12 Employment Service Act, 2014 (Government Gazette 37539).

5. KEY AND UNDERLYING POLICY PRINCIPLES

- 5.1 Foreign nationals considering employment as educators in South Africa must comply with the requirements contemplated in applicable legislations.
- 5.2 Foreign educators would only be utilised in areas of critical skill shortages. The Department of Basic Education has identified the following areas of critical skills shortages: **Physical Science, Technology, Engineering and Mathematics**. These areas may be reviewed from time to time by the Department of Basic Education.
- 5.3 Unless there is a government treaty or bi-lateral agreement with neighbouring states and/or other countries, the employment of foreign educators must be considered only after all processes of appointing suitably qualified South African educators have been exhausted.
- 5.4 It is the responsibility of foreign educators to submit their qualifications to SAQA for NQF evaluation/assessment.
- 5.5 Registration with the SACE (South African Council for Educators) is a prerequisite.
- 5.6 No foreign educator may be appointed on a permanent basis unless such an educator obtained permanent residency, in terms of the Immigration Act.
- 5.7 Employment of foreign educators will be bound by a fixed-term employment contract of not more than 1 year if appointed through a Vacancy Circular, in accordance to the permit and the approved P.E of a particular school, as it is aimed at addressing a temporary and specific Human Resource need; or a 3 months basis contract/temporary appointment in Post Level 1 posts.

6. SPECIFIC PROVISIONS

Applications for fixed-term employment for professional foreign educators will be considered, subject to the applicants meeting the following criteria:-

- a) Competing fairly for the prospective position and on condition that no qualified South African citizen had applied for the same position;
- b) Obtain a written job offer and sign a fixed-term contractual agreement for employment of which the maximum term thereof shall not exceed three years;
- c) Secure suitable registration with the South African Council for Educators;

- d) Comply with the normal statutory requirements for work permits and residence in the Republic of South Africa; and
- e) Demonstrate professional competence and high ethical standards.

7. APPOINTMENT PROCESS OF FOREIGN EDUCATORS

- 7.1 To ensure that the Gauteng Department of Education properly implements this circular, a resolution has been taken that all appointments (Fixed contract not exceeding 3 years or 3 months contract/temporary) of foreign national educators will be centralised at the Provincial Office: Directorate: Recruitment and Selection.
- 7.2 The Directorate: Recruitment and Selection will be delegated the authority by the HoD to approve recommendations from the District Directors, after ensuring that all South African educators are considered first. The following categories will be prioritised, before approving a foreign national appointment:-
 - Educators declared additional to the post establishment;
 - Temporary/contract educators occupying vacant substantive posts;
 - State-funded bursary recipients e.g. Funza Lushaka and provincial bursary holders;
 - Educators registered on the National and Provincial Recruitment Database; and
 - Other graduates not included in the categories above.
- 7.3 All applications that meet the basic minimum requirements for temporary or fixed contract appointments should be forwarded to the Recruitment and Selection Directorate.
- 7.4 The Human Resource Practitioners (THRS: HRP) should ensure that the recommendation meets the following minimum requirements:-
 - a) The school, after exhausting all the available lists of qualifying South African educators, must submit appropriate documents for the appointment of a foreign CS Educator:-
 - (i) Fully completed GDE 1 with attached certified copies of qualifications and all relevant documents;
 - (ii) Certified copy of the Work Permit for the specific school; and
 - (iii) All certification should be in accordance with Circular 34 of 2006.
- 7.5 The Director of Recruitment and Selection will apply his/her mind using the available database of qualifying educators to decline or approve the appointment, after the vetting process.
- 7.6 Should the appointment be approved by the Recruitment and Selection Director, he/she will inform the District Director and the following process will unfold:-
 - 7.6.1 The Employer (GDE) will submit to DoL, evidence that proper recruitment and selection processes have been followed and that the local market has been tested (minutes to be attached). This will be done in line with the approved guideline on filling of posts and the circular which deals with the appointment of contract educators, as well as the grievance, as outlined in the collective Agreement 2 of 2005.

- 7.6.2 The Department of Labour (DoL) will regulate and advise on the appointment of foreign educators in line with the Employment Services Act, Chapter 2, Paragraph 8 & 9 and its Employment Services System of South Africa (ESSA) - a system that DoL uses to assist other departments to recruit potential and qualifying employees.
- 7.6.3 DoL will check in its database if there are any South African Educators who may fill the post, before foreigners are employed.
- 7.6.4 This is done upon receipt of the application to employ a foreigner.
- 7.6.5 The Department of Labour will upon receipt of documentation from the Employer provide feedback to appoint or not to appoint a qualifying foreign educator, within 1 to 2 weeks after it has been satisfied.
- 7.6.6 The Department of Labour, upon receiving documentations from the Employer (GDE) provide feedback to appoint or not to appoint the educator; within 1 to two weeks (within a maximum of 30 Day turnaround time), after it has been satisfied.
- 7.6.7 Upon receipt of confirmation from the DoL, the Department of Home Affairs will issue Work Visas (Permits) that are specific to the school where an educator will be teaching/working, as advised by the Employer (GDE).
- 7.7 If the appointment is approved, the Deputy Director: THRS will be required to submit the qualifications to the DHET for evaluation process.
- 7.8 All appointments of foreign educators should be made on salary notch 38/REQV12 for underqualified CS Educators, *regardless of their qualifications*.
- 7.9 Where the qualifications of a foreign CS Educator are evaluated below REQV 13 or "unqualified"/underqualified and the CS Educator is teaching a scarce subject (as mentioned in Paragraph 3.3 above). THRS: HRP should draft a submission for approval by the Recruitment & Selection Director to retain the foreign CS Educator for the remainder of the term. Such an appointment will be for a specified period on Salary Notch 38/ REQV 12.
- 7.10 **No "unqualified"/underqualified foreign CS Educator may assume duty prior to receiving written authorization from the Recruitment & Selection Director.**
- 7.11 The appointment of foreign CS Educators who are currently appointed in a temporary/contract capacity should be changed to fixed contract as per paragraph (7.1), as they do not qualify for conversion to permanent status.
- 7.12 No foreign educator will be appointed in a primary school as Deputy Principals or Principal, since management is not a critical or scarce skill in primary schools or teach in any other Learning Area/s, except those mentioned in paragraph (5.2) above.

8. STATUS OF PERMANENT RESIDENCY

The South African (green) bar-coded identity book will merely indicate that a foreigner is a non-South African citizen and therefore the Gauteng Department of Education will

need to see Permanent Resident Permit information, together with the green bar-coded ID to prove that the respective permits were indeed issued to the foreigner.

"Permanent residence," as set out in Section 26 and 27 of the Immigration Act and Regulations 22 and 23 of the Immigration Regulations, respectively, will allow the holder to become a naturalised citizen in accordance with a well prepared South African citizenship application under the South African Citizenship Act and such status attaches many privileges and benefits over long term residency.

After verification that the two documents (bar-coded ID & Permanent Residency Permit) belong to the employee, he or she will be treated the same way as any other South African citizen.

Should the employee be in a contract/temporary post and meeting the minimum requirements of the posts, he/she will be absorbed permanently, in line with the current Collective Agreement 1/2014 and GDE Circular (GDE Circular 10/2014).

9. RESPONSIBILITIES

- 9.1 The Deputy Director: THRS is required to submit the qualifications for evaluation to DHET.
- 9.2 The services for unqualified educators who are teaching scarce subject/s (See paragraph 3.3) should be terminated or converted to a contract.
- 9.3 The Head of Department approves a request for appointment in a contract for unqualified foreign CS Educators.
- 9.4 All THRS Practitioners are responsible for verification and confirmation of authenticity with the Department of Home Affairs for foreign documentation, before the appointment process.
- 9.5 Approval for the appointment of fixed contract appointment is delegated to the Directorate: Recruitment & Selection.

SIGNED: EDWARD MOSUWE
HEAD OF DEPARTMENT
DATE: 07/02/2016