

Overview of surplus staffing (redundancy) provisions for employees of ACE in schools

Should work cease to exist for ACE employees in schools the following provisions shall apply.

- 1 **The Adult and Community Education (ACE) Staff in Schools' Collective Agreement January 2007 – October 2008**
The ACE Staff CA contains surplus staffing (redundancy) provisions (clauses are attached) for all permanently appointed ACE co-ordinators, whether teaching or non-teaching co-ordinators.
 - 1.1 All school boards (the employers) must apply these provisions to all such employees if their work ceases to exist if they are PPTA members and also if they are on individual employment agreements based on the ACE collective as promulgated by the MoE.
 - 1.2 These provisions apply only to permanently appointed co-ordinators and there are no surplus staffing provisions for tutors, professional supervisors and liaison assistants. Nor are there surplus staffing provisions for fixed term co-ordinators.
 - 1.3 Should there be doubt about tenure ie no letter of appointment for a co-ordinator defining a position as fixed term as required under section 66 of the Employment Relations Act (and clause 1.7 of the ACE CA), the employee is deemed to be a permanent employee and the surplus staffing provisions shall apply.
 - 1.4 There are two separate sets of provisions:
 - (i) For co-ordinators who are not employed as teachers in the same school, ie non-teaching co-ordinators, and
 - (ii) For co-ordinators who are currently employed as teachers in the same school.

- 2 **Surplus staffing (redundancy) provisions co-ordinators who are not employed as teachers in the same school are as follows:**
 - 2.1 The surplus staffing process for non teaching co-ordinators requires a month for consultation followed by a month's notice should the Board decide to disestablish the position, ie two months in total.
 - (i) The first month is to advise affected employees that there is a possibility of a surplus staffing situation ie if a board is considering that they may not offer any ACE courses in 2010 then 2 months before the end of Term 4 this year they should be advising affected staff.
 - (ii) Then when a board makes the decision that a position is surplus those employees must be given written notice of one month of disestablishment of their position and termination of their employment. This month is to be at a time when the employee is paid and at work.

- (iii) During the first month the employer is to consider whether there is alternative employment in the school with comparable terms and conditions.
- (iv) During the second month both the employer and employee are to make reasonable efforts to find alternative employment and the employee will be allowed time to attend interviews etc.

2.2 Alternative employment

- (i) The provisions about finding comparable alternative employment were written at a time when a school may have been deciding to transfer their ACE funding to a nearby school and there may have been a vacancy for co-ordination in that school.
- (ii) The provisions state that should a reasonable offer of alternative employment be made then there will be no surplus staffing costs. A 'reasonable offer' is defined as being in the same location or reasonable commuting distance, having comparable duties and terms and conditions no less favourable than their current position.
- (iii) It may still be possible that a school is able to offer comparable employment in some capacity as support staff in the same school. Terms and conditions no less favourable means pay and hours should not be less than their current position.
- (iv) An employee may be made an offer of alternative employment of lesser terms and conditions with an allowance to recognise the reduced income from the new position. An employee does not have to accept this. If they do accept this alternative position, no surplus staffing (redundancy) is payable.

2.3 Redundancy payment

Where no offer of alternative employment is accepted by the employee then they are entitled to a redundancy payment at the termination of their current employment as follows:

- (i) 6 weeks pay for the first year of service and two weeks pay for every year or part year thereafter to a maximum of 30 weeks pay in total.
- (ii) An employee with less than one year's service shall receive a pro-rata payment.
- (iii) This is calculated on average gross weekly earnings as a non-teaching co-ordinator over the previous 12 months service.
- (iv) The definition of service is the service as a co-ordinator with the current employer.
- (v) All wages owing shall continue until the termination date.
- (vi) All holiday pay shall be paid at the termination of employment also.
- (vii) Upon request, a work reference or record of service shall be provided.

3 Surplus staffing (redundancy) provisions co-ordinators who are employed as teachers in the same school are as follows:

3.1 The surplus staffing process for teaching co-ordinators requires **two months** for consultation followed by **two month's** notice should the Board decide to disestablish the position, ie four months in total. Should the position be disestablished, a return to teaching is the first option.

- (i) Should a school anticipate changes to ACE provision for 2010 then at least two months prior to a board making any final decision discussions should begin with affected teaching co-ordinators with the intention of finding a solution prior to that final board decision.
- (ii) The intention of this early dialogue is to ensure that returning to teaching is a viable and first option through attrition or other non-permanently allocated teaching hours. Additional professional development may also be part of making a return to teaching a viable offer.
- (iii) Where an employer offers equivalent teaching time to any co-ordination time lost this shall constitute a reasonable offer and entitlement to surplus staffing provisions is removed.

3.2 Surplus staffing entitlements

Where a board cannot provide teaching hours equivalent to lost co-ordination time (0.1fte , 0.2fte etc) then the surplus staffing options under the applicable teachers' collective agreement shall apply to that portion of their permanent teaching position ie they shall apply on a pro-rata basis, leaving the teacher with a part-time permanent teaching position.

The voluntary surplus staffing provisions from the teachers' agreement would apply as follows:

- (i) Should a teacher elect to become supernumerary it will be for 30 school weeks in their own school and at the end of that time will become a permanent part-time teacher;
- (ii) Should a teacher elect the retraining option for 40 school weeks, then it is expected that the study or professional development would be focussed on returning to teaching;
- (iii) The severance payment is payable from the date of disestablishment unless otherwise agreed;
- (iv) Severance is calculated (on that proportion of the teacher's pay that was allocated to the co-ordinator role) as for teachers covered by the STCA - see the table below

Length of Service	Weeks of Payment
Up to 3 years	7 weeks
Over 3 years and up to 5 years	15 weeks
5 years and over	23 weeks

- (v) Calculating service for severance is the same as calculating that for a teacher ie all service as a teacher in a state or integrated school is counted.
- (vi) The long service payment is not applicable.

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FROM: Adult and Community Education Collective Agreement 2007-2008

7.3 SURPLUS STAFFING: NON-TEACHING CO-ORDINATORS

- 7.3.1 The following provisions shall apply to permanent non-teaching co-ordinators and shall not apply to any fixed term employee. They include a permanent Teaching Co-ordinator who is not concurrently employed as a teacher within the same school.
- 7.3.2 A surplus staffing situation may arise when the work undertaken by the employee ceases to exist. This may be the result of the restructuring of the whole or any part of the employer's operations because of, for example:
 - the reorganisation or review of work; or
 - change of status or closure of the school, or the sale or transfer of all or part of the school.
- 7.3.3 The employer shall, at least one month prior to issuing notice of termination, advise the affected employee(s) of the possibility of a surplus staffing situation. During this period the employer shall consider whether or not it is able to offer an alternative position within the school with terms and conditions that are no less favourable, which may also entail on the job retraining. Where relevant the provisions of 7.2 above will also apply.
- 7.3.4 An employee identified as surplus in terms of 7.3.3 above shall be given a minimum of one month's written notice of termination of employment. Except in exceptional circumstances (e.g., long-term sick leave), or as agreed with the employee, this notice shall be given at such a time as to ensure it covers a period of a full month during which the employee is paid and at work.
- 7.3.5 During the notice of termination period both the employer and the employee shall make reasonable efforts to locate alternative employment for the employee. The employer will provide reasonable paid time to attend interviews, where prior approval will not be unreasonably withheld.
- 7.3.6 In the event that a reasonable offer of employment in the education or state service is made the employer's responsibilities under these provisions shall be fulfilled. As reasonable offer of employment shall constitute an offer of employment that:
 - is in the same location or within reasonable commuting distance;
 - has comparable duties and responsibilities; and

- has terms and conditions that are no less favourable providing the employment being offered is available to be taken up by the employee prior to or at the conclusion of the notice of termination period.
- 7.3.7 If the offer of employment referred to in 7.3.6 is not a reasonable offer by reason only that it is not available to be taken up by the employee before or at the conclusion of the notice period, the employer may extend the notice period until such time as the position is available to be taken up by the employee; and under these circumstances the offer shall be deemed to be reasonable.
- 7.3.8 The employee may be made an offer of employment prior to the disestablishment of the current position either within the education or state service. This offer may be to a lower graded position to that previously held or to a position with reduced hours and will include an allowance which provides some recognition of the reduced income arising from the new position. Where the employee accepts such an offer the employer's responsibilities under 7.3.9 below shall be fulfilled. Where the employee does not accept such an offer the provisions of 7.3.9 shall apply.
- 7.3.9 Except as provided under 7.3.8 above, where a reasonable offer of employment is not made before the expiry of the notice of termination period the employee will be entitled to redundancy pay calculated as follows:
- (a) 6 weeks pay for the first year of service and two weeks pay for every year or part year thereafter to a maximum of 30 weeks pay in total.
- Note:*
1. *This is calculated on average gross weekly earnings as a non-teaching co-ordinator over the previous 12 months service.*
 2. *A worker with less than one year's service shall receive a pro-rata payment.*
- For the purposes of the redundancy calculation the definition of service is the service as a co-ordinator with the current employer provided that no period of service that ended with the employee receiving a redundancy or severance payment shall be counted as service.
- (b) All holiday pay and wages owing.
- 7.3.10 A work reference or record of service shall be provided on the employee's request.

7.4 SURPLUS STAFFING: TEACHING CO-ORDINATORS

- 7.4.1 The employer and teacher co-ordinator may agree at any time to the teacher co-ordinator replacing their ACE time allowance with equivalent teaching time within the school.
- 7.4.2 The following provisions shall apply where the employer either withdraws from ACE or otherwise alters its involvement, so that the ACE time allowance allocated to a permanent teacher co-ordinator is placed at risk.
- 7.4.3 Where the employer is seriously considering a course of action which places the teacher co-ordinator's ACE role at risk a meeting shall be held, including the co-ordinator and/or their representative, with a view to reaching an agreed resolution prior to any final board decision. This shall be held at least two months prior to any decision in ACE provision at the school and within a timeframe that ensures that the return to teaching is a viable option.
- 7.4.4 Where the ACE co-ordination role is to be disestablished, the employee shall receive at least two month's notice. As a first option the employer shall enable a return to full-time permanent teaching for the teaching co-ordinator by the use of attrition or other non-permanently allocated teaching hours wherever possible. A teaching co-ordinator may require additional professional development in moving to a full-time teaching role.

- 7.4.5 Where before or during the notice period the employer offers the co-ordinator equivalent teaching time to any co-ordination time lost, this shall constitute a reasonable offer of employment and the co-ordinator shall have no entitlement to surplus staffing provisions.
- 7.4.6 Where the employer is looking to combine allocated ACE funding with another employer resulting in the creation of a similar or larger position this would also be discussed with the co-ordinator. Attention is also drawn to 7.2 of this collective agreement (Employment Protection Provisions) which will be relevant in certain circumstances.
- 7.4.7 Where the employee receives an offer from the new employer this will need to be discussed with the current employer in relation to the teacher's ongoing teaching responsibility. A co-ordinator who accepts such a position with the new employer shall not be entitled to surplus staffing provisions. Should the larger co-ordinator role accepted not involve teaching classes the employee shall be regarded as a Teaching Co-ordinator, but one who no longer teaches classes, as per the Part 2 definition.
- 7.4.8 If a suitable position in relation to 7.4.5-7.4.7 above is unable to be offered, the employer will support the co-ordinator finding a suitable alternative teaching position (which incorporates the co-ordination hours lost) outside the school and will then meet the actual and reasonable cost of attending interviews where prior approval is given.
- 7.4.9 A permanent teaching co-ordinator who is not able to secure the equivalent lost teaching time or ACE co-ordination role as described, shall have the options available under 3.9.3 and 3.9.4 of the Secondary Teachers' Collective Agreement (or the equivalent clauses of the Area or Primary Teachers' Collective Agreement where either is the appropriate collective agreement) and shall notify the employer prior to the disestablishment date. The clauses shall be read in conjunction with the following:
- (a) Any entitlement shall only relate to the teaching hours or weekly teacher half days (WTHDs) lost as a teaching co-ordinator. Teaching time will remain permanent and unaffected;
 - (b) For the purposes of supernumerary employment the employee shall be a supernumerary employee only for the co-ordination time lost for a period of 30 school weeks from the date of disestablishment of the position. It is not envisaged supernumerary employment would occur at another school. At the end of the supernumerary period should the teacher not have returned to a full teaching role then they will continue as a permanent part-time teacher.
 - (c) Any agreed retraining option would be focused upon professional development and/or study to support a full return to teaching. Any course requirements shall not interfere with the employee's ongoing permanent teaching role except by agreement of the employer.
 - (d) In relation to a severance payment this shall be payable from the date of disestablishment, except where otherwise agreed. Any calculation again shall reflect WTHDs lost as per clause 3.2.1. In the STCA 3.9.4(3)(c) shall be followed in relation to determining service.
 - (e) The Long Service Payment provision is not applicable.