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Circular: 0036/2024  
Expiry date: None

To: Deputy Directors-General, Chief Directors, Directors, Chief Education Specialists, Circuit Managers, Principals of ordinary public and special schools and Members of governing bodies

Short summary: *Designation of specific services in ordinary public primary schools, schools for special needs and boarding schools as essential services.*

**Subject: Services in ordinary public primary schools, schools for special needs and boarding schools designated as essential services**

## 1. Designation of essential services

1.1 The Essential Services Committee (ESC) of the Department of Employment and Labour published General Notice 2190 of 2023 in *Government Gazette* No. 49757 of 24 November 2023 (attached). In terms of sections 71(8) and 71(7) of the Labour Relations Act (LRA), 1995 (Act 66 of 1995), the ESC has duly designated the following services in paragraph B of General Notice 2190 of 2023 as essential:

- (a) The provision of food to public primary school pupils; and
- (b) The care of children in schools for special needs.

1.2 The ESC published Notice 271 of 2019 in *Government Gazette* No. 42464 of 17 May 2019 (attached), wherein the following services at boarding schools were designated as essential in paragraph 2:

- (a) Services provided by house parents;
- (b) Sanatorium services/dispensing of medicines to learners; and
- (c) Security.

## 2. Limitations on the right to strike and categories of staff

2.1 In terms of section 65(1)(d) of the LRA, staff who are engaged in essential and maintenance services are precluded from participating in a strike or in any conduct in contemplation or furtherance of a strike. Therefore, Western Cape Education

Department (WCED) staff who are directly involved in the delivery of the following services are no longer allowed to participate in strikes and associated conduct per section 65 of the LRA:

- (a) Provision of food to learners at public primary schools.
- (b) Care of children in schools for special needs.
- (c) Services provided by house parents at boarding schools.
- (d) Sanatorium services/dispensing of medicines to learners at boarding schools.
- (e) Security at boarding schools.

2.2 A secondary exclusion from partaking in strike action pertains to support staff who are responsible for the dispensing and sustaining of the essential services at schools. Without said staff performing these services, there is no feeding scheme to provide at the affected schools. The support staff who are involved in the procurement and payment of food suppliers for the National School Nutrition Programme are also not permitted to take part in a strike or similar conduct as stipulated in section 65 of the LRA.

### 3. **Disputes in essential services**

- 3.1 Section 74(1)(a) and (b) of the LRA provides that any party to a dispute that is precluded from participating in strikes due to that party being engaged in an essential service may refer the dispute in writing to—
- (a) a council, if the parties to the dispute fall within the registered scope of that council;  
or
  - (b) the Commission for Conciliation, Mediation and Arbitration, if no council has jurisdiction.
- 3.2 Section 74 of the LRA also provides a recourse to any party involved in essential services to lodge a dispute with the relevant council who will endeavour to resolve the dispute as per the prescribed procedures outlined in this section.
4. All enquiries pertaining to this circular and the relevant legislation should be addressed to the Subdirector: Advisory Services in the Directorate: Employee Relations.
5. Directors in the Directorates: Procurement Management and Financial Accounting and principals are requested to bring the contents of this circular to the attention of all WCED support staff who are directly and indirectly rendering these essential services.

**SIGNED:** B WALTERS

**HEAD: EDUCATION**

**DATE:** 2024-11-07