

Primary Teachers

NZEI Update 2008/69

To: All Primary, Intermediate, Middle and Special Schools

SURPLUS STAFFING: SURPLUS UNITS 2009

September 2008

KEY POINTS:

- This circular outlines action to be taken before the end of the 2008 school year if the school will have a surplus staffing and / or surplus salary unit situation for 2009.
- Note that, while all teachers identified as surplus have access to the staff surplus options in the Primary Teachers Collective Agreement, the Ministry of Education is responsible only for the costs of the surplus that is indicated on the Staffing Entitlement notice received by the school in September for the following school year. The cost of staff surplus identified outside this time frame or additional to that identified by the Ministry resourcing division is a cost to the Board of Trustees.

ACTION:

Worksite representatives:

- There are two copies of this circular. Please give one to your principal immediately. Share the other with your colleagues.

Principals:

- Contact your NZEI field staff for assistance if you have a surplus staffing situation for 2009.
- Refer to the Ministry of Education information documents received with the school's provisional staffing notice for 2009 when reading this circular.

ENQUIRIES:

For further enquiries contact your local NZEI Te Riu Roa field staff officer, NZEI regional office, or NZEI national office.

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SURPLUS STAFFING: SURPLUS UNITS 2009

Dear Colleagues,

The Ministry of Education is about to advise you of the staffing that can be employed, at the cost to the Crown, in your school from the beginning of the 2009 school year. Some schools will find that the level of entitlement staffing for 2009 is less than that the number of teachers employed this year. Those schools will be in a staff surplus situation and will need to begin the process to identify teachers who will be surplus for 2009.

The process needs to be followed correctly. Not to do so could lead to additional costs for the school, either from failure to comply with the Ministry of Education requirements, or from failure to comply with the conditions of employment contained in the Primary Teachers' (Including Deputy and Assistant Principals and other Unit Holders) Collective Agreement 2007-2010.

Please note that separate conditions have been negotiated to cover surplus staffing situations in schools involved in school reorganisations and for the realignment of Resource Teacher: Learning & Behaviour positions. NZEI field staff can provide information specific to each situation.

While all teachers identified as surplus have access to the staff surplus options in the Primary Teachers Collective Agreement, the Ministry of Education is responsible only for the cost of the surplus that is indicated on the Staffing Entitlement notice received by the school in September for the following school year. The cost of staff surplus identified outside this time frame or additional to that identified by the Ministry in the Staffing Notice is a cost to the Board of Trustees.

Principals who have been through a staff surplus process know it is a difficult time for all staff. It is important to keep all staff fully informed throughout the process to minimise, as much as is possible, the stress a surplus staffing situation generates.

This NZEI Update offers 'best practice' advice to help principals to manage the staff surplus process.

Yours sincerely,



Frances Nelson
NZEI President

SURPLUS STAFFING SURPLUS UNITS: 2009

Category one:

Staffing for 2009 has increased

For schools in Category one it should be business as usual for the rest of the 2008 school year apart from advertising and appointing to any new positions that will begin in 2009.

Example: Total staffing entitlement 2008	6.9 FTTE
Total Staffing entitlement 2009	7.3 FTTE
Opportunity to create and advertise new position(s) and adjust part time position(s)	

Category two: (see section A of the attached Chart)

Schools with a 2009 provisional staffing that is the same as for 2008

If your school falls into this category it is business as usual. The potential pitfall for principals in this situation is appointment procedures for the remainder of 2008 if the school is in a falling roll situation and/or may not meet the 2009 roll predictions needed to generate the 2009 provisional staffing level.

If the school has a falling roll, or there is concern that there may be circumstances that could result in a surplus staffing situation in the school for 2009, seek advice from the Ministry of Education before making any permanent appointments to teaching positions that become vacant during the remainder of 2008.

For some schools however the need to offer permanent positions, even in a falling roll situation, will be essential to attract teachers with the skills and experience required to fill the position. NZEI and NZSTA will offer independent advice to schools when approached.

Example: Total staffing entitlement 2008	6.9 FTTE
Total staffing entitlement 2009	6.9 FTTE
No change in salary units	
No action required	

Category three: (see section B of attached chart)

The school is required to reduce the numbers of Full Time Teacher Equivalents (FTTEs) for 2009.

The provisional staffing notice will show that the number of entitlement FTTEs available for 2009 is fewer than that for 2008. It may also show that the number of salary units is fewer than for 2008.

Example: Total staffing entitlement 2008	15.6 FTTE
Total staffing entitlement 2009	14.2 FTTE
Reduction of 1.4 FTTE required.	
The most likely reorganisation would be one full time position identified and a change in part time hours.	

Principals need to be aware that sometimes a reduction in part time FTTEs only can result in a full time teacher having to be identified as surplus. NZEI field staff can help schools work through that situation.

Example: Total staffing entitlement 2008	7.3 FTTE
Total staffing entitlement 2009	6.8 FTTE
Reduction of 0.5 FTTE required.	
If the school has 7 full time permanent teachers in 2008 then the reduction of 0.5 FTTE will result in the identification of a full time position as surplus and a change in the number of part time hours available.	

Attrition is the least disruptive way of managing a staff surplus situation. Positions held by teachers not permanently employed are the first focus for identifying a surplus position.

It is not uncommon for schools to 'carry' one or more fixed term positions to avoid having to go through the surplus staffing identification process. This has to be tempered with the requirement on employers to offer permanent employment unless, under the Employment Relations Act, there is a valid reason not to do so. In such cases (or for any other invalid fixed term appointment) the teacher could challenge the validity of the appointment and the end result could be:

- The teacher is deemed to be permanent
- The school is put into a staffing surplus situation
- The school is liable for the surplus staffing costs.

PTCA SURPLUS STAFFING PROVISIONS

There is a requirement to notify the union if the school is about to enter into a surplus staffing process.

Part 9 of the Primary Teachers' (Including Deputy and Assistant Principals and other Unit Holders) Collective Agreement 2007-2010 (PTCA) refers to the staff surplus process for permanent teachers (both full time and part time). If the tenure of any teachers is uncertain principals should seek advice before commencing the surplus staffing process.

Principals should read Part 9 of the PTCA carefully. Changes to the numbering of this section were made in 2007*. The following provides an overview of Part 9.

THE PROCESS

Attrition

Attrition must be considered first when dealing with the need to reduce either the number of salary units or the number of teachers.

Salary Units: ask the questions

- **Do any of the salary units allocated on a fixed term basis expire before the start of the 2009 school year?**
- **Is there a permanent unit holder who is resigning in 2008?**

If the answer is "yes" to either then the reduction can be managed in whole, or part, by attrition.

The same process applies for identifying the number of positions to be surplus

Teaching positions: ask the questions

- **Does the school have teachers employed on fixed term agreements which end in December 2008?**
- **Is there a permanent teacher who is resigning in 2008?**

If the answer is "yes" to either and the school is able to manage part, or the whole, of the surplus staffing by attrition it should do so.

Do not expose the school to financial risk by deferring the staff surplus process in the hope that staffing will sort itself out through resignations later in the year.

Take a very cautious approach to the Ministry advice to consider "managing" the reduction through banking staffing or board funds. There is no carry over of the period for identification of teaching positions surplus to the staffing entitlement of the school. The Ministry will not pay the costs of surplus staffing if not informed of the action taken by the required date.

*The first printing of the PTCA contains errors in 9.2 (a) and 9A.3. In 9.2(a) the clauses referred to should read "clauses 9A.1 to 9A.11 shall apply". In 9A.3 clause 9A.9 should be replaced by "9A.4".

Needs analysis

If the reduction of staff and/or salary units cannot be managed solely by attrition then a needs analysis shall be conducted by the school. All staff must be involved in the needs analysis.

All teaching positions other than any official Resource Teacher or Learning Support Teachers are to be considered in the needs analysis. Any reduction in these specialist positions is dealt with separately. Your NZEI Field Staff can provide assistance and advice.

Avoiding any pitfalls in the needs analysis process

The needs analysis process *must* include consultation with staff. NZEI is experienced in dealing with the needs analysis process and staff involvement. The needs analysis process is contained in Part 9A (9A.4) of the PTCA. Most problems arise because the correct procedure has not been followed.

NZEI and the Ministry of Education agree that the very first step is to manage any necessary reduction of salary units. The Ministry of Education "Funding Staffing and Allowances Handbook" advises;

"In primary and special schools the identification of salary units that are surplus must be carried out before the surplus positions are identified." (Chapter 2, page 7).

The rationale for this is that Part 9 (9A.4 (d)(ii)) of the PTCA states;

"No teacher shall receive more units than she/he held before the review".

The following process ensures that teachers' rights in this regard are not breached.

The process should be conducted in the following order:

- First:** Manage any reduction of salary units.
- Second:** Remove the remaining teachers holding permanent salary units from the needs analysis process.
- Third:** Attempt to deal with staff reduction by reduction of permanent part time hours.
- Fourth:** Conclude the needs analysis, if need be, by:
- identifying the most appropriate area for the surplus staffing position(s)
 - advertising internally the remaining positions
 - appointing to the positions
 - identifying the teacher(s) who will have access to the surplus staffing provisions.

The needs analysis process must be completed before the end of November 2008 to comply with Ministry timeframes.

Timing

Individual teachers have to be notified by 23 November 2008

The names of the teachers who are surplus to the requirements of the school for 2009 and the surplus options they are seeking must be with the Ministry by 5 December 2008.

RIGHTS OF TEACHERS WHO ARE MADE SURPLUS

Once the needs analysis process is complete and the surplus teacher is identified, the principal is required to discuss options with the teacher in accordance with Part 9 (9A.6) and subsequent clauses of the PTCA.

The fundamental focus of the staff surplus provisions is to keep experienced teachers in the teaching service. The school must be able to demonstrate that keeping teachers in the service has been the key factor in deliberations with the affected teachers. Unless this can be proven the Ministry will not consider funding other options.

Staff Surplus Options

In the first instance the permanent full time (or part time) teachers identified as surplus and the school must consider redeployment or retraining.

Part time teachers who have their hours reduced as a consequence of a staff surplus process must be given two months notice of any reduction.

Part time teachers who lose all their hours are afforded the full staff surplus provisions below, on a pro rata basis, dependent on hours worked.

Redeployment

Redeployment in the teacher's current school is the most common option taken. The teacher in effect receives notice that their current employment status will cease at the end of the 2008 school year and redeployment status will start from the beginning of the 2009 school year.

The redeployment period may be served in another school but only if *both* boards of trustees agree. In most circumstances if a vacancy occurs in either school (the original school or the alternative) during the period of redeployment the position must be offered to the redeployed teacher.

It is important to point out the additional conditions available to a redeployed teacher, including removal expenses, when they secure a permanent position in another location.

Retraining

Retraining proposals require Ministry consent. Courses approved would normally be aggregated level 7 on the National Qualifications Framework.

Payment of the 30 school weeks of retraining commences from the beginning of the 2009 school year.

If a vacancy occurs at the school after the retraining option is confirmed the position may be offered to the teacher. The teacher may either accept the position or continue with the retraining option.

Severance and Long Service Leave

These options can be requested from the Ministry only after the options of redeployment or retraining have fully explored but dismissed as unsuitable. Seek full

advice and Ministry written approval before committing your school to agreeing to either of these options.

CONCLUSION

NZEI provides principals with the best possible advice on staff surplus process in order to limit disruption to the school and to protect all NZEI members.

Use local NZEI field staff throughout the process and make sure teachers have access to the NZEI Membership Support Personnel (MSP). They can provide assistance to NZEI members affected by the surplus staffing process.

For more information please contact your regional NZEI office. Please note that Intermediate and middle schools should also seek PPTA advice if PPTA members are affected in a surplus staffing situation.

A timeline on action to be taken and a flow chart of the needs analysis process is attached to this circular.

NZEI CONTACT NUMBERS

<p>NORTHERN REGION - NGÄ TĀTAHA A MĀUI</p>	<p>Auckland Phone (09) 360-4005</p> <p>Taitokerau Phone (09) 404-1446</p>	<p>Waikato Phone (07) 849-7061</p> <p>Bay of Plenty Phone (07) 349-5063</p>
<p>CENTRAL REGION - TE NGAIO TU</p>	<p>Wellington Phone (04) 384-9689</p> <p>Taranaki Phone (06) 759-1056</p> <p>Palmerston North Phone (06) 354-6671</p>	<p>Gisborne Phone (06) 867-5302</p> <p>Hastings Phone (06) 870-4905</p>
<p>SOUTHERN REGION – TE WAI POUNAMU</p>	<p>Canterbury and West Coast Phone (03) 366-1385</p> <p>Marlborough/Nelson/ Phone (03) 544-9281</p>	<p>Otago Phone (03) 477-1833</p> <p>Southland Phone (03) 217 3689</p>

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