



# Serfontein Viljoen & Swart

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Our ref : Mr. Swart/Claassen/fc/SM2613  
Date : 8 December 2017

**URGENT**

### **DEPARTMENT OF EDUCATION GAUTENG**

BY FAX: (011) 836 9334

BY EMAIL: [deborah.tshivasa@gaiteng.gov.za](mailto:deborah.tshivasa@gaiteng.gov.za)

### **MINISTER OF EDUCATION: ME MATSIE ANGELINA MOTSHEKGA**

BY FAX: (012) 323 5989

EMAIL: [manuz.s@dbe.gov.za](mailto:manuz.s@dbe.gov.za)

### **MEC OF EDUCATION: MR PANYAZA LESUFI**

BY FAX: (011) 355 0542

BY EMAIL: [Asanda.Makubalo@gauteng.gov.za](mailto:Asanda.Makubalo@gauteng.gov.za)

Dear Sir/Madam,

### **IN RE: POST ESTABLISHMENT: 2018: GAUTENG DEPARTMENT OF EDUCATION**

1. We refer to the above matter and confirm that we act herein on behalf of our client, Solidarity Trade Union and Helpende Hand NPO.
2. Solidariteit Trade Union and Helpende Hand Skole Ondersteuning Sentrum ('SOS') (a deviation within Helpende Hand NPO) is an organisation that has as its purpose to support and promote quality education.

Partners: Stephanus Gabriël Serfontein Proc (SA) • Marthinus Jakobus Viljoen B Proc • Stephanus Petrus Swart Biur LLB • Johannes Barnard Luttig BLC LLB • Jan Lodewyk Serfontein BProc  
Professional Assistant: Annette Johanna Louw LLB •  
Associates: Conrad Swart Bcom (Law) LLB Hdip (Insolvency)

3. SOS has learnt that, after much to-ing and fro-ing, the Gauteng Department of Education ('GDE') have advised school principals of the post establishment for their schools for the 2018 academic year only as late as 1 December 2017, at a time well after principals may have been expected to do their planning for the 2018 academic year. It is our understanding that this process should have been completed in September in order for proper planning to have been enabled.
4. We are given to understand that a large number of schools have been given indication, at this very late stage, of a large number of posts that have been removed from their post establishment: this, despite the fact that most (if not all) of these schools have experienced growth in recent years. Although we are in no position to have established the exact extent of the effect, we have heard that as many as 1800 posts are to be lost overall and that certain schools are due to lose as many as 13 educators, with many losing 6 or 7 posts. This, in circumstances where reports have indicated that as many as 72 000 grade 1 and 8 learners have not even been placed for the 2018 academic year.
5. There are a large number of anticipated difficulties that arise if our information is correct. The first of these is that we are advised that, although the posts have been abolished and principals had initially been instructed to give notice to affected educators, there is now a directive in place that no notice ought to be given. It is difficult to understand how matters are to be managed if educators' posts have been abolished, but they are not to be given notice. School principals are placed in an impossible position, and are in the circumstances not able to manage their staff or understand how they are to do planning for the next year. The offer of education – and quality education in particular – is placed in jeopardy.
6. Not only that, but it is our understanding that the post establishments as issued on 1 December 2017 constitute a significant departure from the norms and standards applicable to post establishment, and no apparent reason for this departure exists. It is also not clear to us that the GDE has obtained the requisite permission to deviate from the national standard, as is required.

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7. The problem is exacerbated in circumstances where School Governing Bodies ('SGBs') have held various general meetings of parents at which the budgets of the schools were presented and approved, so that it is not possible for SGBs at this late stage to make up for the shortage of staff that will be experienced through the appointment of personnel by them (even assuming that an SGB could carry as many as 7 or 13 additional educators through the charge of additional school fees, which is highly unlikely).
8. Moreover, in the event that educators are to be dismissed, it is of course necessary for the GDE to comply with the relevant provisions of the Labour Relations Act ('LRA') regarding retrenchments. It is not at all clear to us that any such process has been followed. When retrenchments are anticipated, there is a need for an employer to give adequate notice and to follow extensively prescribed procedures.
9. ~~At issue here~~ is the basic rights to education and fair labour practices enshrined in the Constitution of the Republic of South Africa, as well as the body of statutes and policies that regulate education (including the South African Schools Act, the National Education Policy Act, the Employment of Educators Act, the LRA, and the Personnel Administration Measures). The GDE appears to have proceeded contrary to the provisions of law, and in direct conflict with its duty to ensure access to quality education.
10. We require your urgent confirmation (and by no later than 12h00 on Monday, 11 December 2017), that:
  - 10.1 the GDE shall not proceed to retrench any educators in the absence of following the appropriate procedures under the LRA, including the determination of appropriate procedures for the determination of the identity of educators who are to be retrenched in consequence of the reduced post establishment; and
  - 10.2 the GDE shall retain for the 2018 academic year all posts in place before the issue of the 2018 post establishment.

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11. In the absence of the requisite confirmation, we shall have no option but to engage in appropriate urgent litigation that may include a review of any decisions regarding the 2018 post establishment and an approach to the Labour Court where the GDE has failed to follow the requisite procedures under the LRA.
  
12. In the meantime, we request the GDE and/or the MEC to provide us with the following information by 12h00 on Monday, 11 December 2017:
  - 12.1 The exact number of posts that fall to be abolished in consequence of the 2018 post establishments as issued;
  
  - 12.2 The schools at which posts have been abolished in consequence of the 2018 post establishment, and the number of posts abolished at each of these schools; and
  
  - 12.3 and the reasons informing the decisions of the MEC and/or the GDE regarding post establishment.
  
13. We look forward to hearing from you as a matter of great urgency. In a country where we struggle with great levels of illiteracy and in circumstances where failures of our education system are reported about on a regular basis, we find it astonishing that the GDE is placing in jeopardy the quality of education that can be offered by the schools that are affected. We would obviously prefer to resolve this issue without resorting to litigation, and we urge the GDE and the MEC to approach this important matter with the necessary appreciation of the seriousness of the effects of its decisions.

Yours faithfully

**SERFONTEIN, VILJOEN & SWART**

Pp: Mr. Jan-Daniël Claassen (jd@wvs.co.za)

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