

Surplus Staffing in Primary and Area Schools

Having to tell a valued staff member that they will lose their job through no fault of their own is one of the most stressful situations a principal has to face. While there is no easy way to do it there are processes to follow to make sure staff are supported and receive their legal entitlements.

Principals need to be aware that not following the process could result in a considerable financial cost to the school board of trustees or, at least, an unhappy workplace.

In the case of teachers, the following information relates to surplus staffing situations generated by a reduction in the school's provisional staffing roll where this results in a reduction in the number of teachers that can be employed at the government's expense.

If the school is involved in a closure or a merger resulting from a network review initiated by either the board or the Ministry of Education, the processes and entitlements are different and you will need to contact the NZEI Te Riu Roa Principals Helpline (0508 774 624) for further advice.

Surplus staffing

A school has a surplus staffing situation if the number of employees employed at the time is greater than the number of employees that can be employed in the future. This might happen when the school is amalgamating with another school, or is changing its status, or is closing.

The most frequent reason however is that the school roll has dropped. This can reduce the amount of funding available for employing board-funded staff and might also reduce the number of teachers that can be employed at the government's expense.

It is a time of anxiety for both the principal and staff. Principals need to keep staff fully informed, maintain their confidence and commitment at all times and promote staff welfare by supporting the staff members who will lose their jobs. NZEI Te Riu Roa Principals' Support Officers can advise you on the process (0508 774 624) and NZEI Te Riu Roa Field Officers can work with staff if requested. Contact NZEI Help 0800 693 443 to arrange this support.

Important Resources

Principals, as managers of staff, need to be certain of the processes to be followed and of members' entitlements. The school should have a copy of every employment agreement applicable to staff. These set out the relevant provisions and entitlements for employees in a surplus staffing situation.

Collective Agreements

- [Kaiārahi I te Reo, Therapists, ATSSD and Special Education Assistants Collective Agreement 13 December 2019 – 6 February 2022](#)
- [Support Staff in Schools Collective Agreement 13 December 2019 – 6 February 2022.](#)
- [Primary Teachers'\(including Deputy and Assistant Principals and other Unit Holders\) Collective Agreement 1 July 2019 to 30 June 2022](#)
- [Primary Principals' Collective Agreement 26 August 2019 to 25 August 2022](#)
- [Area School Teachers' Collective Agreement 1 July 2019 – 30 June 2022](#)
- [Area School Principals Collective Agreement 6 September 2019 – 5 September 2022](#)

These collective agreements are also accessible on the NZEI Te Riu Roa website – www.nzei.org.nz

Please note that school cleaners and caretakers are covered by the School Cleaners and Caretakers Collective Agreement. The E Tu union negotiates and is the union party to this collective agreement.

Individual Employment Agreements

Individual agreements promulgated by the Ministry of Education for teachers and principals, or by the school board of trustees for support staff and other employees, also contain surplus staffing provisions. Individual employment agreements, if any, should be referred to during the surplus staffing process.

Surplus Staffing Policy/Procedure

Boards of trustees are required by the State Sector Act, school charters and employment agreements to be good employers. As part of this, all schools should have a documented surplus staffing/surplus units policy and procedure covering every type of position in the school. It will establish the good employer guidelines for the principal and board and a statement for staff on how the principal and board will deal with any surplus staffing or surplus units situation.

Planning the future

It is important to maintain cohesion and collegiality with all staff and have their commitment to supporting colleagues who are directly affected by the surplus staffing situation. It should be emphasised that a position has been identified as surplus, not the person in that position. It is important to recognise that grieving is a natural reaction for any person whose position is identified as surplus. The NZEI Te Riu Roa Member Assist service is also available through NZEI Help 0800 693 443 to provide pastoral support to members in these situations.

Surplus Staffing and Support Staff

The provisions in the Support Staff in Schools Collective Agreement (SSCA), Part 10, include the employer's responsibility to assist the staff member to find alternative employment and action the entitlement to a redundancy payment. While the provisions are different to teachers' provisions, the principles of identification and how people should be treated are essentially the same.

One key difference is that support staff must be consulted before it is decided that there is a surplus situation (note clauses 10.2.3 and 10.2.4). This is a contractual requirement and enables an exploration of possible alternatives if there is a surplus. If no alternatives can be found, redundancy is payable. The calculation of redundancy pay is based on length of employment. The collective agreement also requires a minimum period of one month's notice for being made redundant.

Please note that there are provisions in the SSCA (clause 2.5) that allow for a variation of hours to be determined on a once per year basis with a minimum of one month's notice. Such variation of hours must be recorded in writing. Under clause 2.5.1A, variations can be up to a maximum of 25% of the employee's previous hours. Any variation beyond a 25% reduction would, unless otherwise agreed by the employee, be deemed to be a redundancy situation.

Make sure that the employment information for all support staff is documented and checked for accuracy.

Surplus Staffing and Teachers

The notices sent to schools in September each year detail the school's staffing entitlement for the following year. Read the notices carefully, check the allocation for the next year against the current year to confirm whether a surplus staffing process needs to be initiated. In the same way, check the information about unit allocation. Seek clarification from your MOE regional staffing officer or the MOE resourcing help desk if you are unsure about the school's circumstances and what is required.

NZEI Te Riu Roa Principals Helpline (0508 774 624) should be contacted for advice and support as soon as a staffing entitlement notice from the Ministry of Education showing a reduction in Full Time Teachers Equivalents (FTTE) for the following year is received.

If the surplus staffing situation is in an intermediate or primary school with a technology centre, there may be teachers who are members of PPTA and are covered by the Secondary Teachers Collective Agreement. If you have questions in such circumstances, you should contact PPTA directly.

Dealing with a surplus situation

Initial consultation and potential attrition

Unless a school is closing, all staff, including those currently on leave, should be invited to discuss in confidence and without prejudice, any plans for a career change. Take care not to accept hasty decisions. Take extra care not to apply any pressure and make sure all staff understand that they would not be eligible for any of the surplus staffing entitlements if they resign from their current position.

Attrition.

It may be obvious that attrition will deal with a surplus situation. There may be an unfilled vacancy or a reliever employed in a vacancy; there may be a fixed term appointment due to end or a staff member may have given advance notice of their intended resignation before the reduction must be made. In such situations, attrition must, and will, deal with the surplus.

***Note:** Principals need to be aware there are legal requirements about fixed term positions. If these are not adhered to, a teacher who has been considered as fixed-term might legally be permanent. This has implications for the surplus staffing process and possible funding implications for the Board of Trustees. Please refer to the section in this Kit on fixed term appointments for further information. If you have any questions contact the NZEI Te Riu Roa Principals Helpline for assistance.*

If attrition does not deal with the surplus it is necessary to undertake a needs analysis.

Note 1: Communities of Learning and surplus staffing

All teachers in a school with a surplus situation for the following school year are included in the surplus staffing process. The holding of a community of learning (COL) role does not exempt a teacher from the Needs Analysis process and the possibility of being identified as surplus. As a person can only be appointed to a COL role because they are already, and primarily, employed in a teaching or management position (other than that of the principal) basic to the needs of the school they cannot be put to one side.

- The COL role allowances do not exempt a teacher from being included in the surplus staffing process. The caveat that applies to redistribution of salary units does not apply to COL allowances.
- If a teacher whose position has been identified as surplus is also in COL role then the surplus staffing options in Part 9 of the PTCA would be available to that teacher.
- If the COL resourcing is sufficient to maintain the COL role held by the teacher identified as surplus, then that role can be reallocated to another teacher employee by the COL or the school.
- There is salary protection to cover the loss of COL role allowances.
- A school employing teachers using the COL time allowances needs to carefully craft the letters of appointment particularly if a part time (or full time) teacher is to be employed using both entitlement FTES and COL time allowances. The teacher with the time allowance affected by the loss of the COL role will lose those hours with no compensation if the COL role is not continued.

Note 2: No teacher other than, in special circumstances, a teacher in a designated Deputy or Assistant Principal position can volunteer to be surplus. A teacher could

resign from their position but then would not have access to any surplus staffing provisions.

Note 3: Voluntary Identification

Only those teachers designated as "assistant principal" or "deputy principal" can choose to be identified as surplus, and only in some circumstances. They must have **lost all their units as the result of the identification process** and the school must also be required to lose a teacher.

Assistant principals or deputy principals may either

- **elect** to be identified as surplus; they will be identified and will have access to the staff surplus options; or
- **volunteer** to be retained as a basic scale teacher. In this scenario the school is required to go through a selection process to determine which basic scale teacher will be identified as surplus. Please note that any assistant principal or deputy principal or other unit holder who has lost all their units is included in that process and might, or might not, be identified as surplus.

Analysing School Needs: The Needs Analysis

This must be done in consultation with the staff. The principal must explain what has to be done and why. The process must be transparent.

Consider the school charter and its mission statement.

- Review the school's charter, mission statement, development plan, and policies on units and surplus staffing.
- What is demanded of the school?
- What are the local goals?
- What does the school development plan focus on?
- What staffing will the school require to meet the school development plan over the next year?
- If the school is an integrated school, refer to the school's Deed of Integration to check the requirements for 'tagged positions'

Identify needs.

In consultation with staff, identify a future organisation that meets the school needs using the number of positions and salary units the school will have once the reduction has taken place.

- What is the school roll and how is that made up? Look at the year levels as well as educational needs. What is required to implement the curriculum for this mix?
- What is required to meet any special needs?
- What is required to ensure continuity of programmes? Are there any special community expectations on the school?
- What are the students' pastoral needs?
- Consider the staffing structure
 - Without using teachers' names, write a description of the school's present structure and organisation.

- In consultation with staff, identify a future organisation to meet the school needs, using the number of positions and salary units the school will have once the reduction has been effected.
- Review the current job descriptions
 - Will changes be necessary to incorporate the new structure? What criteria for selection are suggested?

Ask affected teachers:

- how and when they would prefer to be informed of decisions; e.g. in writing or face to face, by telephone, after school, on a Friday
- how and when they would like other staff and parents to be informed.

Present a surplus staffing plan to the board of trustees

Include the:

- school's agreed surplus staffing/surplus units policy
- selection process and board involvement
- number of positions/units at risk
- positions to be internally advertised, job descriptions for the positions and the criteria for selection.

Identification Process

The difference between the present structure and the future organisation of the school will identify from which area of the staffing structure the surplus positions and/or units should come. It may identify an obvious position if there is only one in that area. If there is more than one such position, the remaining positions must be internally advertised and teachers in that area should apply for them.

If both positions and units must be lost, the identification processes must be co-ordinated. It is preferable to consider teaching and other responsibilities separately. First identify where the unit is to be lost and then which position is surplus.

The surplus staffing process must not result in a teacher losing more units than the school is required to lose, nor should it result in salary units being reallocated to other teachers. No one should be better off than they were at the start of the process.

Inform staff of the identification process including:

- positions available, roles, responsibilities, job descriptions and the number and type of units (if any) attached to each position
- closing date for applications
- requirements for applications e.g. letters of application, CVs, interviews
- selection committee personnel

Ensure that the board of trustees confirms in writing

- the decisions made in the identification process
- this must include, for successful applicants, notification of any change in units and/or job description.

Support for staff

- ask NZEI Help (0800 693 443) if an NZEI Te Riu Roa field officer could attend a staff meeting to explain the agreement provisions and talk with staff about the options available
- make sure that teachers have information about contacting the NZEI Te Riu Roa Member Assist service and also the support the board is required to provide
- assess the collegial support needed and put it in place
- make available information on professional counselling such as career and change management and personal counselling; offer suggestions if appropriate. NZEI Help 0800 693 443 can provide details.

Surplus Staffing Options

Teachers whose positions are identified as surplus have up to four possible options:

- **Redeployment:** 30 school weeks further employment in their current school as a supernumerary teacher (or in another school if both Boards of Trustees agree).
- **Retraining:** 30 school weeks paid leave to undertake retraining courses approved by the Secretary for Education. Teachers are required to meet their own fees and costs (unless their board agrees to pay them).

Should neither of the above options be deemed appropriate by the Ministry then there are two additional options that may be explored:

- **Long service payment:** 26 weeks' salary, for teachers who have at least 25 years of service.
- **Severance:** 7 to 23 weeks' salary, depending on length of service.

The possibilities of redeployment and retraining must be thoroughly explored with the identified teacher. The Ministry of Education will fund long service payments or severance only where it agrees that the first two options (redeployment and retraining) are inappropriate in the particular circumstances. If a board gives a commitment to either the long service payment or severance without MOE agreement the board will have to meet the considerable cost of honouring that commitment.

Make sure teachers are aware that accepting a long service payment or severance has several disadvantages should they want to return to teaching in the school sector. In particular, they may have to refund some or all of the payment if they commence permanent employment within the timeframe for which they have received payment, and they will lose all accumulated service-based entitlements such as sick leave.

The Primary Teachers Collective Agreement contains entitlement to staff surplus provisions for permanent part time teachers who lose all their hours as a consequence of a staff surplus process.

Salary Protection: Units

Teachers losing units will continue to receive their current salary for up to one year, or the remaining duration (if shorter) in the case of fixed term units. Where, within a 12-month period, the school subsequently gains units, they must be allocated to the teachers who have lost units, in the order in which they lost them. The agreement specifies a selection process where two or more teachers lose units at the same time.

Vacancies

If a vacancy occurs in the school after the surplus staffing process is completed, teachers who are redeployed in their own or another school have the right to be offered the position. If the position offered is 'suitable', and permanent, a refusal to take up the position results in the surplus staffing entitlement being withdrawn, leaving the teacher unemployed. Teachers who have taken up the retraining option do not have an entitlement to be offered a vacancy. The board may make such an offer but the retraining teacher can refuse without penalty.

Suggestions for a School's Surplus Staffing Policy/Procedure

The school policy/procedure guidelines should include:

- informing NZEI Te Riu Roa and/or PPTA and E Tu union (in the case of caretakers and directly employed cleaners) that a review is taking place
- what is expected of the principal in consulting with and informing staff
- board involvement in the processes
- how staff and parents will be informed
- application of agreement provisions
- the processes for conducting the needs analysis and identifying the positions to be surplus and any salary units to be reduced
- requirements for internal applications to the remaining positions
- provisions for review or discussion of decisions
- support for staff identified as "surplus".

The guidelines must be consistent with all the relevant collective agreements.

Keeping staff informed

- Ask NZEI Help if your NZEI field staff or principal support officer could attend a staff meeting to explain the agreement provisions and talk with staff
- Ask teachers how they would prefer to be informed of decisions
- How might they wish other staff and parents to be informed
- Make sure that staff have information about the NZEI Te Riu Roa Member Assist service

- Gather information on professional counselling available such as career and change management and personal counselling; offer suggestions if appropriate. NZEI Help can provide details.
- Assess the collegial support that might be needed and put it in place
- Recognise that grieving is a natural reaction to loss. Be informed about the grieving process. Someone will be losing a valued job.

Planning for the future with the identified staff member:

- Assess professional strengths and skills
- Provide help with compiling an up-to-date CV
- Offer to act as a referee
- Suggest to the board of trustees that it provide a detailed statement of service in the school and a testimonial to accompany job applications
- Remind the board to make provision for reasonable costs of attending job interviews
- Explain clearly the provisions of the respective collective agreement
- Consider allowing the staff member time from duties to adjust and work through the options available.

Pastoral care

The loss of a job is a major life event. It is to be expected that staff members whose positions have been identified as surplus will find the decision hard to accept. Grief is a normal reaction to loss. When we grieve we go through several stages towards acceptance and planning for the future.

- An initial reaction is anger. Decisions and procedures may be questioned. Principals may be criticised or attacked. The staff member who feels angry needs to be understood. Accept the anger as normal and necessary.
- It can help for principals to put themselves in the staff member's position and think about what they would like others to do for them at this time. It is not the right time to explain the problems the principal may have had in making the decision.
- The staff member may find it hard to maintain energy and commitment. Depression is a feature of this stage of grieving. Senior staff will have a special responsibility for providing support.
- The principal can help the staff member accept the future by sensitively contributing ideas, especially if they choose redeployment. Don't expect them to accept all the suggestions, but encourage creative thinking.
- Nothing succeeds like success. Positive achievements during the employment protection period will build confidence. With confidence comes acceptance and

the ability to move into the future. The statements of service, testimonials, an up-to-date CV and a good referee are vital now.

- When the staff member leaves the school their contribution should be recognised. Leaving is a rite of passage; everyone needs to feel good about it.

Staff should be informed that the board will pay for an agreed amount of counselling and assistance. The EAP Service provides employee support and can be contacted at www.eapservice.co.nz or 0800 327 669.