

2003 No. 1963

EDUCATION, ENGLAND

School Staffing (England) Regulations 2003

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SCHEDULE

Regulation 9

Transitional dismissal and disciplinary procedures

In exercise of the powers conferred on the Secretary of State by sections 72 and 138(7) of the School Standards and Framework Act 1998(a) and sections 19(3), 26, 34(5), 35(4) and (5), 36(4) and (5) and 210(7) of the Education Act 2002(b), the Secretary of State for Education and Skills hereby makes the following Regulations:

(a) 1998 c.31. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England.

(b) 2002 c.32; see section 212 for the definition of "regulations". By virtue of that definition these regulations made by the Secretary of State apply only to England.

PART 1

General

Citation, commencement and application

- 1.—(1) These Regulations may be cited as the School Staffing (England) Regulations 2003.
- (2) These Regulations come into force on 1st September 2003.
- (3) These Regulations apply only in relation to England.

Revocation

2. The following are revoked—
 - (a) the Education (School Meals Staff) (England) Regulations 1999(a), and
 - (b) Part VI of the Education (New Schools) (England) Regulations 1999(b).

Interpretation

- 3.—(1) In these Regulations—
 - “the 1998 Act” means the School Standards and Framework Act 1998;
 - “the 2002 Act” means the Education Act 2002;
 - “authority” means the local education authority by which a maintained school is, or a proposed school is to be, maintained;
 - “dismissal” is to be interpreted in accordance with sections 95 and 136 of the Employment Rights Act 1996(c);
 - “support staff” means any member of a school’s staff other than a teacher;
 - “teacher” means a person who is a school teacher for the purposes of section 122 of the 2002 Act and includes a person who would be regarded as a teacher but for the fact the other party to the contract is not an authority or a governing body of a school falling within Part 3 of these Regulations.
- (2) References to a vacancy in any post include a prospective vacancy in the post.
- (3) A person is to be treated as meeting any staff qualification requirements if he—
 - (a) fulfils any requirements with respect to qualifications or registration which apply to him as a result of regulations made under sections 132 to 135 of the 2002 Act(d) and regulations made under section 19 of the Teaching and Higher Education Act 1998(e),
 - (b) meets any conditions with respect to health and physical capacity which apply to him as a result of Part 3 of the Education (Teachers’ Qualifications and Health Standards) (England) Regulations 1999(f) or regulations made under section 141 of the 2002 Act, and
 - (c) is not subject to any direction made under section 142 of the 2002 Act, that he may not carry out work to which that section applies.

(a) S.I.1999/2258.

(b) S.I.1999/2262.

(c) 1996 c.18.

(d) The Education (School Teachers’ Qualifications) (England) Regulations 2003, S.I. 2003/1662 and The Education (Specified Work and Registration) (England) Regulations 2003, S.I. 2003/1663 and any regulations made under section 135 of the 2002 Act.

(e) 1998 c.30; the Education (Induction Arrangements for School Teachers) (Consolidation) (England) Regulations 2001, S.I. 2001/2897 as amended by S.I. 2001/3938, S.I. 2002/2063 and S.I. 2003/106.

(f) S.I.1999/2166. These Regulations are saved by the Education Act 2002 (Commencement No.6 and Transitional and Saving Provisions) Order 2003, S.I. 2003/1667 (C.69).

(4) References to support staff include support staff employed, or engaged otherwise than under a contract of employment, to provide community facilities and services under section 27 of the 2002 Act.

Delegation of authority

4.—(1) The governing body may delegate—

- (a) its functions under regulations 14, 15, 17, 23 and 24, and
- (b) its power to appoint or dismiss any member of staff at a school to which Part 3 applies.

(2) Subject to paragraph (4), any such delegation may be to—

- (a) the head teacher,
- (b) one or more governors, or
- (c) one or more governors and the head teacher.

(3) Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings. Such advice must be considered by the governor or governors to whom the delegation has been made.

(4) The governing body may delegate any decision whether or not to make a determination that the head teacher should cease to work at the school, or to dismiss the head teacher, to one or more governors.

Performance of the head teacher

5. Where the authority has any serious concerns about the performance of the head teacher of a school—

- (a) it must make a written report of its concerns to the chair of the governing body of the school, at the same time sending a copy to the head teacher; and
- (b) the chair of the governing body must notify the authority in writing of the action he proposes to take in the light of the report.

Conduct and discipline of staff

6.—(1) The governing body must establish procedures—

- (a) for the regulation of the conduct and discipline of staff at the school; and
- (b) by which staff may seek redress for any grievance relating to their work at the school.

(2) Where the implementation of any determination made by the governing body in operation of the procedures requires any action which—

- (a) is not within the functions exercisable by the governing body by or under the 2002 Act, but
- (b) is within the power of the authority,

the authority must take that action at the request of the governing body.

Capability of staff

7. The governing body must establish procedures for dealing with lack of capability on the part of staff at the school.

Amendment of the School Governance (Procedures) (England) Regulations 2003

8. Regulation 16(1) of the School Governance (Procedures) (England) Regulations 2003(a) is replaced by—

“(1) Subject to regulation 17 of these Regulations, regulation 3(2) of the Religious Character of Schools (Designation Procedure) Regulations 1998(b), regulation 6 of the Education (School Government) (Terms of Reference) (England) Regulations 2000(c) and regulations 13, 22 and 29 of the School Staffing (England) Regulations 2003, the governing body may delegate any of its functions to—

- (a) a committee;
- (b) any governor; or
- (c) the head teacher (whether or not he is a governor).”.

Transitional provisions

9. The Schedule to these Regulations has effect for the purpose of making transitional provisions.

PART 2

Provisions relating to community, voluntary controlled, community special and maintained nursery schools

Interpretation of Part 2

10. This Part applies to community, voluntary controlled, community special and maintained nursery schools(d).

Manner of appointment

11.—(1) Where a governing body approves, identifies, selects or recommends a person for appointment under regulations 13(5), 13(7), 14(3) or 15(1), it is for the governing body to determine whether that person is appointed—

- (a) under a contract of employment with the authority,
- (b) by the authority otherwise than under a contract of employment, or
- (c) by the governing body otherwise than under a contract of employment.

(2) Any person so appointed must meet all relevant staff qualification requirements.

Authority’s entitlement to offer advice

12.—(1) A representative of the authority may attend and offer advice at all proceedings relating to the selection or dismissal of any teacher.

(2) Such advice must be considered by the governing body or any person or persons to whom such functions have been delegated when reaching any such decision.

(a) S.I. 2003/1377. These Regulations were amended by the School Governance (Constitution and Procedures) (England) (Amendments) Regulations 2003 (S.I. 2003/1916).

(b) S.I. 1998/2535.

(c) S.I. 2000/2122.

(d) But only to such schools with delegated budgets as defined by section 39(2) of the 2002 Act, in accordance with section 35(7) of the 2002 Act.

Appointment of head teacher and deputy head teacher

13.—(1) The governing body must notify the authority of—

- (a) any vacancy for the head teacher, and
- (b) where it identifies the post of deputy head teacher as one to be filled, that post.

(2) The governing body must advertise any such vacancy or post in such manner as it considers appropriate.

(3) The governing body must appoint a selection panel consisting of at least three of its members, to—

- (a) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the authority in writing of the names of the applicants so selected,
- (b) interview such of those applicants as attend for the purpose, and
- (c) where they consider it appropriate, recommend to the governing body for approval one of the applicants interviewed by them.

(4) If within a period of seven days beginning with the date when it receives notification under paragraph (3)(a), the authority makes written representations to the selection panel that any applicant is not a suitable person for the appointment, the selection panel must—

- (a) consider those representations, and
- (b) where it decides to recommend for appointment any person about whom representations have been made, notify the governing body and authority in writing of its reasons.

(5) Subject to regulation 11(2), where the person recommended by the selection panel is approved by the governing body for appointment, the authority must appoint the person, unless regulation 11(1)(c) applies.

(6) If—

- (a) the selection panel do not recommend a person to the governing body, or
- (b) the governing body declines to approve the person recommended by the selection panel, or
- (c) the authority declines to appoint the person that the governing body approves,

the selection panel may select another person in accordance with this regulation (but this does not prevent the selection of an existing applicant).

(7) Subject to regulation 11(2), if the governing body has good reason not to advertise and conduct a selection process to fill the vacancy or post in accordance with paragraphs (2) to (4), the authority must appoint the person identified by the governing body to fill the vacancy or post, unless regulation 11(1)(c) applies.

Appointment of other teachers

14.—(1) This regulation applies to any post of teacher, other than a post of head teacher or deputy head teacher, which is to be filled for a period of more than four months.

(2) Where the governing body identifies any such post to be filled, it must send a specification for the post to the authority.

(3) Subject to regulation 11(2), where a person is selected by the governing body for appointment, the authority must appoint the person, unless regulation 11(1)(c) applies.

(4) If the authority declines to appoint a person that the governing body selects, the governing body may select another person for appointment in accordance with this regulation (but this does not prevent the selection of an existing applicant).

Appointment of support staff

15.—(1) Subject to regulation 18, where the governing body identifies a support staff post to be filled, it may recommend a person to the authority for appointment.

(2) Any such recommendation must be sent to the authority with a job specification for the post. The job specification must include the governing body's recommendations as to—

- (a) the duties to be performed,
- (b) the hours of work (where the post is part-time),
- (c) the duration of appointment,
- (d) the grade, and
- (e) the remuneration.

(3) The grade must be on the scale of grades applicable in relation to employment with the authority, and such as the governing body considers appropriate.

(4) Where the authority has discretion with respect to remuneration, it must exercise that discretion in accordance with the governing body's recommendation. The authority may be regarded as having discretion if any provisions regulating the rates of remuneration or allowances payable to persons in the authority's employment either—

- (a) do not apply in relation to that appointment, or
- (b) leave to the authority any degree of discretion as to the rate of remuneration.

(5) If within a period of seven days after receiving the job specification the authority makes written representations to the governing body relating to the grade or remuneration to be paid, the governing body must—

- (a) consider those representations, and
- (b) where it decides not to change the grade or remuneration to be paid, notify the authority in writing of its reasons.

(6) Subject to regulation 11(2), the authority must appoint a person recommended to the post by the governing body, unless regulation 11(1)(c) applies.

Suspension of staff

16.—(1) Subject to regulation 18, both the governing body and the head teacher have power to suspend any person employed or engaged otherwise than under a contract of employment to work at the school where, in the opinion of the governing body or (as the case may be) the head teacher, his suspension is required.

(2) The governing body or head teacher must, when exercising that power, immediately inform the authority and the head teacher or (as the case may be) governing body.

(3) A suspension under this regulation may only be ended by the governing body.

(4) The governing body must, on ending such a suspension, immediately inform the authority and the head teacher.

(5) In this regulation "suspend" means suspend without loss of emoluments.

Dismissal of staff

17.—(1) Subject to regulation 18, where the governing body determines that any person employed or engaged by the authority to work at the school should cease to work there(a), it must notify the authority in writing of its determination and the reasons for it.

(a) The Schedule makes relevant provision.

(2) If the person concerned is employed or engaged to work solely at the school (and does not resign), the authority must, before the end of the period of fourteen days beginning with the date on which the notification under paragraph (1) is given, either—

- (a) give him such notice terminating his contract with the authority as is required under that contract, or
- (b) terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of his conduct.

(3) If the person concerned is not employed or engaged by the authority to work solely at the school, the authority must require him to cease to work at the school.

School meals staff

18.—(1) Subject to paragraphs (2) to (4), the authority is responsible for the appointment, discipline, suspension and dismissal of school meals staff who work or are to work at a school. Before exercising any such function the authority must consult the school's governing body to such extent as the authority thinks fit.

(2) Where an order is in force under section 512A(1) of the Education Act 1996 imposing on the governing body of a school a duty corresponding to a duty of the authority mentioned in section 512(3) and (4) of that Act (duty to provide school lunches) or section 512ZB(1) of that Act (duty to provide school lunches free of charge), paragraph (3) or (4) applies as appropriate.

(3) Where the governing body has entered into an agreement with the authority that the authority should provide lunches at the school, then where the governing body determines that any school meals staff member should cease to work at the school it must notify the authority in writing of its determination and the reason for it, and the authority must then require the person to cease to work at the school.

(4) Where no such agreement has been entered into, then regulations 6 and 15 to 17 apply to such staff members.

PART 3

Provisions relating to foundation, voluntary aided and foundation special schools

Interpretation of Part 3

19. This Part applies to foundation, voluntary aided and foundation special schools(a).

Manner of appointment

20.—(1) Where the governing body has selected a person for appointment he may be appointed either—

- (a) under a contract of employment, or
- (b) otherwise than under a contract of employment.

(2) Any person so appointed must meet all relevant staff qualification requirements.

(a) But only such schools with delegated budgets as defined by section 39(2) of the 2002 Act in accordance with section 36(7) of the 2002 Act.

Authority's entitlement to offer advice

21.—(1) The authority is entitled to advise the governing body in relation to the exercise of any of the governing body's functions of appointment, engagement and dismissal of any teacher, to the extent provided by, and subject to, any relevant agreement.

(2) A "relevant agreement" is an agreement in writing between the authority and the governing body which gives the authority an entitlement to advise the governing body in relation to the exercise of some or all of those functions, and which has not been terminated by notice in writing given by the governing body to the authority.

(3) In the absence of a relevant agreement, it is for the Secretary of State to determine the extent to which the authority is entitled to advise the governing body in relation to the exercise of any of those functions.

(4) The governing body, or any other person to whom the functions in question have been delegated, must consider any advice given by the authority pursuant to an entitlement under paragraphs (1) to (3).

(5) The Secretary of State may at any time withdraw a determination.

Appointment of head teacher and deputy head teacher

22.—(1) The governing body must notify the authority of—

- (a) any vacancy for the head teacher, and
- (b) where it identifies a post of deputy head teacher as one to be filled, that post.

(2) The governing body must advertise any such vacancy or post in such manner as it considers appropriate.

(3) The governing body must appoint a selection panel consisting of at least three of its members, to—

- (a) select for interview such applicants for the post as they think fit and, where the post is that of head teacher, notify the authority in writing of the names of the applicants so selected,
- (b) interview such of those applicants as attend for the purpose, and
- (c) where they consider it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by them.

(4) If within a period of seven days beginning with the date when it receives notification under paragraph (3)(a), the authority makes written representations to the selection panel that any of the applicants is not a suitable person for the appointment, the selection panel must—

- (a) consider those representations, and
- (b) where they decide to recommend for appointment the person about whom the representations have been made, notify the authority in writing of their reasons.

(5) Subject to regulation 20(2), the governing body may appoint the person recommended by the selection panel to the vacancy or the post to be filled.

(6) If—

- (a) the selection panel do not recommend a person to the governing body, or
- (b) the governing body declines to appoint the person selected by the selection panel,

the selection panel may select another person for appointment in accordance with this regulation (but this does not prevent the selection of an existing applicant).

(7) Subject to regulation 20(2), if the governing body has good reason not to advertise and conduct a selection process to fill the vacancy or post in accordance with paragraphs (2) to (4), the governing body may appoint such other person it has identified to the vacancy or post to be filled.

(8) Paragraphs (2) to (7) are subject to regulation 27.

Appointment of other teachers

23. Where the governing body identifies any post of teacher (other than head teacher or deputy head teacher) which is to be filled for a period of more than four months, it must send a specification for the post to the authority.

Appointment of support staff

24. Any appointment of support staff must be made by the governing body unless the governing body and the authority agree that the appointment should be made by the authority.

Suspension of staff

25.—(1) Both the governing body and the head teacher have power to suspend any person employed or engaged otherwise than under a contract of employment to work at the school where in the opinion of the governing body or (as the case may be) the head teacher, his suspension from the school is required.

(2) The governing body or head teacher must in exercising that power, immediately inform the head teacher or (as the case may be) the governing body.

(3) A suspension under this regulation may only be ended by the governing body.

(4) The governing body must, on ending such a suspension, inform the head teacher.

(5) In this regulation “suspend” means suspend without loss of emoluments.

Suspension and dismissal of authority staff

26. In the case of staff employed, or engaged otherwise than under a contract of employment, by the authority under regulation 24, regulation 16 (in place of regulation 25) and regulation 17 apply as they apply to schools referred to in regulation 10.

Appointment of head teachers for schools of Roman Catholic religious orders

27.—(1) This regulation applies to a voluntary aided school if the trustees under a trust deed relating to the school are also trustees of a Roman Catholic religious order (“the order”).

(2) Subject to paragraph (5), paragraphs (3) and (4) have effect in relation to the filling of a vacancy in the post of head teacher of the school, in place of regulation 22(2) to (7).

(3) The governing body must notify the Major Superior of the vacancy in writing.

(4) The governing body must—

(a) interview such persons who are members of the order as are proposed as candidates for appointment to the post by the Major Superior, and

(b) appoint to the post one of the persons so interviewed unless, by virtue of regulation 20(2) or otherwise, the governing body has good reason for not making any such appointment.

(5) If no appointment is made by the governing body under paragraph (4)(b), regulation 22(2) to (7), have effect in relation to the filling of the vacancy.

(6) In this regulation—

“the Major Superior” means the Major Superior of the order;

“Roman Catholic religious order” means a Roman Catholic religious institute or society of apostolic life.

PART 4

Collaboration between schools

General

28.—(1) Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff these Regulations apply, subject to this Part(a).

(2) In this Part and in the Schedule—

“collaborating governing bodies” means two or more governing bodies which arrange for any of their functions to be discharged jointly;

“relevant school” means the school or schools to which any member of staff is, or is to be, appointed.

Appointment of head teacher and deputy head teacher

29.—(1) In relation to the appointment of a head teacher or a deputy head teacher under regulation 13 or 22(b)—

(a) the selection panel must consist of at least three governors taken from any of the collaborating governing bodies, and

(b) the selection panel must make their recommendation to the governing body of the relevant school.

(2) If the recommendation is not approved by that governing body the selection process must be repeated by the selection panel of the collaborating governing bodies unless the relevant school’s governing body withdraws from the agreement to collaborate.

Appointment of other teachers and support staff

30.—(1) The collaborating governing bodies may delegate the appointment of any teacher (other than the head teacher and deputy head teacher) and support staff to—

(a) the head teacher of one or more of the collaborating schools,

(b) one or more governors from any of the collaborating schools,

(c) one or more head teachers with one or more governors from any of the collaborating schools.

(2) Any decision relating to the appointment of a member of staff must be unanimous.

(3) Where the collaborating governing bodies have delegated the appointment of a member of staff, other than to the head teacher of the relevant school, the head teacher of the relevant school is entitled to attend and offer advice. Such advice must be considered by the person or persons to whom the delegation has been made.

Dismissal of staff

31.—(1) The collaborating governing bodies may delegate—

(a) the determination that a member of staff (other than the head teacher) should cease to work at a relevant school, or

(b) the power to dismiss a member of staff (other than the head teacher) from a relevant school.

(2) Any such delegation may be to—

(a) the head teacher of one or more of the collaborating schools,

(a) Schools may collaborate under regulation 3(1) of the School Governance (Collaboration) (England) Regulations 2003 (S.I. 2003/1962)

(b) Paragraphs (2) to (7) of regulation 22 are subject to regulation 27.

- (b) one or more governors from any of the collaborating schools,
- (c) one or more head teachers acting with one or more governors from any of the collaborating schools.

(3) The collaborating governing bodies may delegate the determination that the head teacher should cease to work at, or the decision to dismiss the head teacher from, a relevant school to one or more governors.

Authority's entitlement to offer advice

32. Where the authority has an entitlement to offer advice to any individual governing body, the authority has the same entitlement to offer advice to the other collaborating governing bodies.

PART 5

Staffing of new schools

Interpretation of provisions applied by Part 5

33. Any provision of these Regulations or Schedule 2 to the 2002 Act which applies in relation to a proposed school as a result of this Part has effect for that purpose as if—

- (a) any reference to a “governing body” were a reference to a temporary governing body, and
- (b) any reference to a “governor” were a reference to a temporary governor.

Staffing of proposed community, voluntary controlled, community special and maintained nursery schools having delegated budgets

34. Where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget^(a), regulations 4 to 7, 9 and 11 to 18 apply.

Staffing of proposed foundation, voluntary aided and foundation special schools having delegated budgets

35. Where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget, regulations 4 to 7, 9 and 20 to 27 apply.

Staffing of proposed community, voluntary controlled, community special and maintained nursery schools without delegated budgets

36. Where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school does not have a delegated budget, Part 1 of Schedule 2 to the 2002 Act applies.

Staffing of proposed foundation, voluntary aided or foundation special schools without delegated budgets

37. Where a proposed school which will be a foundation, voluntary aided or foundation special school does not have a delegated budget, Part 2 of Schedule 2 to the 2002 Act applies.

(a) See section 49(2) and (3) of the 1998 Act as to whether a school has a delegated budget. A school having a delegated budget is defined by section 39(2) of the 2002 Act.

5th August 2003

Stephen Twigg
Parliamentary Under Secretary of State
Department for Education and Skills

SCHEDULE

Regulation 9

Transitional dismissal and disciplinary procedures

1. In this Schedule “relevant period” means the period prescribed in section 108 of the Employment Rights Act 1996(a).

2.—(1) Pending the commencement of section 29(1) of the Employment Act 2002(b) the following will apply.

(2) Before the governing body determines that a member of staff should cease to work at the school or be dismissed, it must—

- (a) give that person an opportunity to make representations as to any action it proposes to take (including, if he so wishes, oral representations to such person or persons as the governing body may appoint for the purpose), and
- (b) have regard to any representations made by him.

(3) In the case of schools to which Part 2 of these Regulations applies and members of staff to whom regulation 26 applies, the governing body must make arrangements for giving any person, in respect of whom it has made a determination that they should cease to work at the school, an opportunity to appeal at a hearing before at least three governors and notify the authority of the outcome of the hearing within seven days.

(4) In the case of schools to which Part 3 of these Regulations applies, the governing body must make arrangements for giving any person it has decided to dismiss, an opportunity to appeal at a hearing before at least three governors.

(5) In the case of collaborating schools to which Part 4 of these Regulations applies—

- (a) the collaborating governing bodies must make arrangements for giving any person in respect of whom they have made a determination that they should cease to work at a relevant school, an opportunity to appeal at a hearing before at least three governors, and notify the authority of the outcome of the hearing within seven days, and
- (b) the collaborating governing bodies must make arrangements for giving any person who they have decided to dismiss from a relevant school an opportunity to appeal at a hearing before at least three governors.

(6) Nothing in paragraphs (2) to (5) applies to a person who—

- (a) is due to cease work at the school by reason of the termination of his contract of employment by effluxion of time (unless the member of staff has been employed for a period of four or more years),
- (b) has not been continuously employed at the school for the relevant period, or
- (c) has failed to meet any staff qualification requirements.

(a) 1996 c.18.
(b) 2002 c.22.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the staffing of maintained schools.

Part 1 covers general matters and in particular delegation of authority, the performance of the head teacher, conduct and discipline of staff, capability of teachers and the provision of staff for community facilities and services.

Part 2 relates to community, voluntary controlled, community special and maintained nursery schools and deal with the appointment of staff, suspension of staff, dismissal of staff and the authority's entitlement to offer advice. Part 2 also provides for the appointment of school meals staff.

Part 3 relates to foundation, voluntary aided and foundation special schools and deals with the appointment of staff, suspension of staff, dismissal of staff and the authority's entitlement to offer advice. Part 3 also provides for the appointment of head teachers for schools of Roman Catholic religious orders.

Part 4 relates to collaborating schools.

Part 5 relates to the staffing of new schools either with or without delegated budgets.

The Schedule makes transitional provision for dismissal and disciplinary procedures pending the commencement of section 29(1) of the Employment Act.

STATUTORY INSTRUMENTS

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EDUCATION, ENGLAND

School Staffing (England) Regulations 2003

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