



# Dame Alice Owen's School

## Health & Attendance Policy & Procedure \*\*

May 2016

(Policy first agreed by the Governing Body Personnel & Communications Committee May 2012)

### Reviews:

Agreed by the Governing Body Personnel & Remuneration Committee

May 2016

To be reviewed

Summer 2016

(reviewed every 2 years)

*\*\* This School policy is based on the Herts County Council model policy*

### 1. Objective and Scope

The school recognises that its employees' contribution to the functionality of the school is crucial to its continuing success. It is therefore committed to preserving the health, welfare and safety of all its employees and as such seeks to provide a safe and healthy working environment. It is inevitable that from time to time employees may be unable to attend work due to sickness or injury. In such instances, the school is committed to dealing with absence due to genuine sickness in an empathetic, objective, sensitive, and consistent way across the school and to assist employees' return to work as quickly as possible. It is also the school's aim to minimise the incidence of sickness and to give appropriate guidance and support to achieve this.

This policy sets out the school's approach in relation to sickness absence management, including its procedure for notification and certification and its position on payment during sickness absence.

The policy and procedure applies to all employees of the school. This policy and procedure does not form part of any employees' contract of employment.

### 2. Breaches of this policy

Breaches of this policy include a failure to adhere to notification and certification procedures or taking 'sickness absences' when not genuinely ill. Advice will be sought from the Schools' HR Advisory team in these circumstances.

In the case of a breach of this policy, employees will be subject to disciplinary proceedings and possible withdrawal of sick pay. In cases of frequent or long-term absence, the school will also have regard to its Absence Management Procedure.

### 3. Headteachers and the Chair of Governors

In cases where the Headteacher is the absent party, the Chair of Governors will carry out the functions normally allocated to the Headteacher in this procedure. The Chair of Governors should take advice from an HR Adviser.

Where Headteachers are absent they will need to notify both the Chair of Governors and their Deputy or next suitable post holder.

#### **4. Notification/Certification Procedure**

If the absence is the result of an accident or injury sustained during the course of work duties, this information and the name of the person to whom the incident was reported must be made known. This is to ensure that the school's management has properly recorded the accident and, where necessary, taken remedial action.

##### **4.1 First day of absence**

It is a requirement that employees **contact the Headteacher** unless otherwise directed by the school, as soon as possible on the first day of absence. Employees should strive to do this at the earliest possible opportunity, and in any case prior to the time they are due to start work so that cover may be arranged.

##### **4.2 Second to seventh calendar day of absence**

Thereafter, employees (or their next of kin if they are not sufficiently well to do so) should maintain contact, during any period of self-certification, such that their Headteacher has a reasonable knowledge of the employee's progress at all times, and of when he/she can realistically expect the employee to return to work.

Unless the school specifically requests it, employees are not required to submit a fit note for absences of up to 7 calendar days' but, on their return to work, must confirm to the school the number of days they were off sick and the reasons for the absence, via the completion of a self-certification form (see appendix 3).

##### **4.3 Absence greater than 7 calendar days**

For absences of more than 7 consecutive calendar days, (including weekends and public holidays), employees must obtain a medical certificate from their doctor and send it to the school immediately after the first week of absence. If an employee is still not fit to return by the time their medical certificate expires, the employee must obtain another medical certificate so that their entire period of absence is covered and send this to the school at the earliest opportunity.

##### **4.4 School holidays**

The requirement to provide a certificate to cover absences also applies to school holidays. Where an employee is not fit to work on the last day of term and first day of the next, a certificate should be provided to cover the school holidays or otherwise to show that the employee was fit during that period of time.

##### **4.5 Provision of Fit notes for periods of absence less than 8 calendar days**

The school reserves the right to require employees to obtain a medical certificate from their GP for absences of any duration. Examples of when this may be done include where there are concerns about frequent absence, or where employees have been off work due to sickness at any time during the week immediately before or immediately after they have taken some holiday (in this case, a certificate will be required for the whole period of absence).

In the event that a GP charges an employee for providing a medical certificate (i.e. where the sickness absence has lasted less than 7 days'), the school will reimburse the employee for this charge, a receipt should be requested and provided to the school. The school will not pay for medical certificates that are required under the normal notification/certification procedure under the Sickness Procedure (i.e. if the absence has lasted more than 7 days').

##### **4.6 Fit notes which recommend adjustments**

The school will give reasonable consideration to all adjustments recommended by GPs where it is stated that the employee is fit if certain adjustments can be made. However where the school feels unable to comply with the adjustments the employee will remain sick in accordance with the note.

#### **4.7 Sickness incapacity whilst on annual leave**

If an employee becomes unfit during annual leave and wishes to treat the incapacity as sick leave they must comply fully with the usual requirements for notification and provision of medical evidence. Where those requirements are not fulfilled the absence will be deemed to be unauthorised and will not be paid.

### **5. Maintaining contact**

It is recommended that regular contact be maintained between the employee and employer throughout any prolonged period of absence.

It is anticipated that at an early stage arrangements will be made between the employee and their Headteacher, line manager, or other nominated person as to the frequency and form (e.g. telephone, email, or letters) that contact is to take.

### **6. Failure to inform the school of an absence and/or failure to provide a medical certificate**

A failure to attend work without providing a reasonable reason, in the schools' opinion, for absence will be deemed an unauthorised absence from work which may result in an employee being deemed to be in breach of contract.

Should an employee fail to provide a certificate either from the outset of an absence or fail to maintain certification throughout the entire period of their absence they will be treated as having an unauthorised absence from the work and may be deemed to be in breach of contract.

It is reasonable in such circumstances for the school to make reasonable efforts to contact an employee to establish their whereabouts to ensure their wellbeing and log their attempts to do so.

The management of such absences is not covered by this policy. Where such issues arise the Schools' HR Advisory Team should be contacted promptly for further guidance.

### **7. Sick Pay**

Subject to compliance with the appropriate procedures, the school will pay "Statutory Sick Pay" (SSP) in respect of all eligible employees at the prevailing nationally set rates, and payment will be subject to deduction of tax and National Insurance contributions as appropriate. To qualify for payment of SSP, a "self-certificate" declaration form must be completed upon return to work after any period of absence (see appendix 3). SSP is payable from the 4<sup>th</sup> day of absence.

The school will also pay occupational sick pay (up to and including full basic salary for a certain period, less any SSP received) subject always to continued compliance with the school's sickness absence and notification/certification procedures. Eligibility for occupational sick pay and the level and duration of payment of any occupational sick pay will follow the entitlements set out in the relevant conditions of service for School Teachers (Burgundy Book) and conditions of service for Local Government Employees (see appendix 2).

No payment will be made in respect of unauthorised absences. Pay will not be reinstated if a certificate is latterly provided.

For long term absences, if it is concluded in the schools' reasonable belief, that an employee is unable to fulfil his/her contract of employment as a result of ill health, the school reserves the right to terminate the employee's contract with due notice having followed the Absence Management procedure (section 10) prior to any applicable sick pay having been exhausted.

If a period of sickness absence is or appears to be occasioned by actionable negligence, nuisance or breach of any statutory duty on the part of a third party, in respect of which damages are or may be recoverable, employees must immediately notify the Headteacher of that fact and of any claim, compromise, settlement or judgment made or awarded in connection with it and all relevant particulars that the school may reasonably require. If the school require an employee to do so, they must co-operate

in any related legal proceedings and refund the school that part of any damages or compensation the employee recovers that relates to lost earnings for the period of sickness absence as we may reasonably determine, less any costs incurred by the employee in connection with the recovery of such damages or compensation, provided that the amount to be refunded to the school shall not exceed the total amount the school paid to the employee in respect of the period of sickness absence.

## **8. Medical appointments**

The school will allow reasonable time-off for employees to attend medical appointments, which are unable to be arranged out of working hours. Before arranging non-urgent doctor's medical appointments, employees should seek the approval of their Headteacher if it is necessary to take time off work. Employees should make every attempt to make these appointments at the beginning or end of the day or during lunch breaks to minimise the time they have to be absent from work.

## **9. Return to work meetings**

It is considered good management practice to hold return to work meetings after every period of sickness absence. Where possible, the return to work meeting will be carried out on the first day back to work by the Headteacher, Line Manager, or other nominated person, or shortly afterwards where this is not possible.

The meeting will be to welcome the employee back to work and seek to clarify that the employee is fit to carry out the duties of their post. The meeting will also establish the reasons for the absence and highlight any additional support required. Any concerns regarding absence may be raised and measures identified to support the employee to improve attendance where necessary and help to prevent its recurrence.

In a Return to Work Meeting employees should be made aware when they are near to reaching the trigger points (see point 9.1) and that reaching these could result in a formal ill health capability meeting being convened (see section 16). If an employee has reached the trigger points when a Return to Work Meeting is held, the employee should be made aware that an ill health capability meeting will be scheduled and a first written warning could be given at this meeting.

A record of the meeting must be made using the Self Certification Sickness Absence and Return to Work Meeting Form (appendix 3), a copy of this form should be given to the employee and the original placed on the employee's personal record file.

### **9.1 Trigger Points**

In any 6 month period, these trigger points are:

- 3 separate occasions of sickness absence; and/or
- a continuous sickness absence of 10 working days' or more
- When an absence appears to have a recurring recognisable pattern, for example frequent absenteeism around a weekend

However, these trigger points are for guidance only and the school reserves the right to raise any concerns with an employee at an earlier stage where there are reasonable grounds for concern, or at a later stage where appropriate, and to institute an Attendance Improvement Plan at any time (see section 9.2).

It is hoped that the closer monitoring and the discussions with an employee will result in an improved attendance record.

Employees should, however, be aware that a poor attendance record may result in formal action being taken, which may, in some circumstances, include and/or lead to the termination of their employment.

## 9.2 Attendance Improvement Plan (AIP).

An AIP is a record of what an employee will need to achieve in terms of attendance over the coming weeks or months set as appropriate to give enough time to demonstrate attendance has improved with details of assistance that the employee will be offered, wherever possible, to help them achieve it.

When setting an AIP a copy of this policy and procedure should be given to the employee.

AIPs may be put in place at either where there are management concerns or as part of a formal process.

## 9.3 Persistent short term absence

If an employee's sickness absence is close to reaching or indeed has reached a "trigger point", the relevant line manager and/or Headteacher may discuss this with the employee and start to monitor their sickness absence more carefully through an Attendance Improvement Plan and according to the Absence Management Procedure.

In management discussions with the employee the Headteacher or relevant line manager should advise the employee of the potential consequences of further absences, meeting or exceeding a trigger point.

## 9.4 Long term sickness absence

Long term sickness absence occurs when an employee is absent from work for a continuous period of **at least 28 calendar days**. Where it is clear at the outset or becomes clear after a time that the absence will be long term, a referral can be made to the Occupational Health Unit (usually after 4 to 6 weeks' of continuous absence, sooner if there are concerns of a mental health nature for example, stress, anxiety or depression). The Headteacher or nominated person will inform the member of staff that the Occupational Health Unit will be asked to give an opinion in relation to the employee's current fitness for work and recommendations for support that may be of benefit, where it can be facilitated. The Headteacher or nominated person will then contact the Schools' HR Advisory team about making a referral to the Occupational Health Unit.

## 9.5 Referral to the Occupational Health Unit

During any period of absence or on their return to work, the school may require an employee to be examined by an Occupational Health Physician/Adviser via the Local Authority Occupational Health Unit so that they can prepare a medical report. If a report is required by the school, employees are expected to co-operate fully with the County Occupational Health Physician/Adviser. This may include attending an appointment with the County Occupational Health Physician/Adviser.

- In this section, the duties of a Headteacher may be delegated to another appropriate member of staff
- A copy of this policy and procedure should be given to the employee
- The Headteacher should talk to the employee and explain that he/she will be referring him/her to the Occupational Health Unit. In some circumstances however, it may be necessary to inform the employee in writing

### 9.5.1 When to make a referral

A referral should be made if any of the following occur:

- Where it is anticipated or known that the absence is going to last 4 weeks' or more. The absence need not have exceeded 4 weeks' at the time of making the referral.
- Where there is a concern over persistent short term absence prior to or during an Attendance Improvement Plan.
- Where a trigger point is met, unless a referral has already been undertaken recently.
- Where there is a concern of any nature where there appears to be an underlying medical condition.

- When an employee has been absent with, or appears to be suffering from, mental health issues (for example stress, anxiety, depression).
- Where there are concerns about an employee's health and/or safety in the workplace and medical advice is required.

Referrals may not be necessary for routine procedures which require a fixed period of convalescence, unless complications arise.

### **9.5.2 Making a Referral**

- The Headteacher must contact the Schools' HR Advisory Team with information about the employee he/she wishes to refer.
- The Headteacher will be asked to complete a referral form.
- The Schools' HR Advisory Team will then initiate the referral process and will advise the school accordingly until its conclusion.
- In some cases an employee may request a referral to Occupational Health but this must be done through, and in agreement with, the school.

### **9.5.3 Factors to be considered by Occupational Health Unit**

- Whether or not the individual is likely to attend work regularly and resume the full duties of the post in the foreseeable future because they are deemed fit for work;
- Whether the employee has a disability which is covered by the Equalities Act, how it affects him/her and whether any reasonable adjustments are required;
- Whether there are convenient and effective ways in which they consider duties or circumstances could reasonably be adjusted or restricted, taking into account the fitness and ability of the employee;
- Whether ill health retirement is an option.

It should be noted that the outcomes of an Occupational Health referral in the form of the report(s) provided are advisory in nature; it will ultimately be a judgement for the school, having sought HR advice as to whether any given recommendation can be reasonably implemented.

### **9.5.4 Phased Return to Work**

There may be certain cases where following a long term illness the Occupational Health Physician/Adviser recommends that it would be beneficial for an employee to initially return to work on a part-time basis, until his/her health has fully recovered. It is expected that a phased return to work should last no more than 4 weeks'. By the nature of its name it is expected that the employee should be capable of gradually increasing their hours up to the level for which they are contracted throughout the 4 week phased return.

Pay during a phased return will reflect the hours worked by the employee for each week the phasing is agreed to span.

It is recommended that a record should be kept of discussions with employees where adjustments, including phased returns are discussed.

### **9.5.5 Change of Role/ Redeployment**

The Occupational Health Physician/Adviser may suggest that the employee would benefit from a change in role or change of duties sufficient for it to be considered a new role.

The school is not required to create a new role or deploy someone to a role for which they do not have the necessary skills to successfully fulfil.

### **9.5.6 Retirement on Ill health Grounds**

Ill health retirement may be considered once all other options have been exhausted and should be a last resort once all other options have been considered.

The Local Government Pension Scheme requires employers to obtain a certificate from an Independent Occupational Health Adviser before making decisions on pension benefits. All support staff must therefore be referred by the school to Occupational Health to facilitate consideration of whether authorisation to retire on ill health grounds should be given.

The Teachers' Pensions Agency requires employees to apply for retirement benefits through the Occupational Health Physician once the employee has completed the relevant forms available from [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk).

The decision of whether an individual can be retired on ill health grounds can only come from Occupational Health for local government staff and Teachers' Pensions for Teachers.

This is not an option the school can implement through choice.

### **10. Absence Management Procedure**

The school is aware that frequent or long term sickness absence may be caused by an underlying medical condition. If an employee should feel that this is or may be the case, they should inform the school of this as soon as possible so that it can take any appropriate steps. These could include asking the employee to see a County Occupational Health Physician/Adviser to gain a better understanding of the underlying medical condition and/or making reasonable adjustments to help the employee.

High levels of sickness absence and/or repeated sickness absence can cause significant disruption to the business of the school and can place an undue burden on other team members and therefore this needs to be managed closely.

The employee may be required to give consent for the release of medical information.

### **11. Formal action**

Ill health capability meetings/hearings and the management of absence is based on the principle that whilst absence due to ill health will not usually be the fault of an employee, there will come a point where the employee is deemed incapable of undertaking the role they were employed to do as they are not in work regularly enough to effectively fulfil the role, despite consideration of reasonable support to reduce levels and/or instances of absence.

At every formal stage in the procedure, the employee will:

- be given advance notice of any formal ill health capability meeting/hearing, which should not be less than 10 working days' without prior agreement
- be advised in writing of the nature of the attendance concerns against him or her
- have the right to be accompanied by their Professional Association/ Trade Union representative or work colleague
- have a right of appeal against any sanction imposed

The purpose of the meeting/hearing will be to:

- consider the nature of the illnesses and the likelihood of absences recurring
- review the level of sickness absence and the operational impact
- review any advice that has been received from Occupational Health and/or any other medical evidence
- review what absence improvement plans the employee has undertaken, where relevant, and their attendance levels during those
- consider any relevant issues or representations raised by the employee
- determine whether there are grounds for concern and, if so, determine what action is appropriate

Employees should make all reasonable efforts to attend meetings convened under this Procedure. If an employee fails to attend any meeting without good reason, the school reserves the right to make a decision in their absence.

Where an employee is not fit enough to attend a formal meeting the individual organising the meeting may choose to arrange another date (once) if the employee has given prior notice that they will be unable to attend a hearing through ill health. In this circumstance there will only be one opportunity for the employee to request another date for the meeting. A second meeting date will be arranged through consultation with the employee and his/her representative, where there is one, this will be within a reasonable timescale not resulting in any significant delay to the convening of the meeting. Advice should be sought from the Schools' HR Advisory Team to ensure that appropriate account is taken of any disability. If the employee is still unable to attend they may provide a written statement to be considered at the meeting.

## **12. Principles**

**12.1** Before formal action is taken it is expected that the employee will have been advised of a need for their attendance to improve, usually at return to work interviews, and discussion having taken place regarding any support that the employee may benefit from, where the attendance concern relates to short term absence. Consideration should be given to putting an AIP in place.

**12.2** Where the concern relates to prolonged absence, it is expected that a reasonable attempt will be made to gain medical advice from the County Occupational Health Physician/Adviser via the Occupational Health Unit. This will include consideration of whether any reasonable adjustments or restrictions would enable the employee to return to work. Additionally it should be considered whether a reasonable period for recovery has been given, in the schools opinion and weighing up input from Occupational Health; and whether a return to work is likely in the short term.

Further to Occupational Health advice being sought, attempts should be made to meet with the employee to ascertain whether any of the above points require further support. This will usually be facilitated by an HR Adviser from the Schools' HR Advisory Team. The key points discussed in this meeting should be recorded in a follow up letter which is shared with the employee.

## **13. Expert advice at meetings or a hearing**

At any ill health capability meeting, including the subsequent deliberations leading to a judgement, the Headteacher or panel may be advised by an HR Professional. For Schools that subscribe to the Schools' HR Advisory Service, please contact your HR Adviser prior to arranging a hearing.

At any meeting/hearing where dismissal is to be considered, the following provisions apply:

- b the school will invite an HR Adviser. If an HR Adviser is to be in attendance the school must send all of the papers for the hearing to the HR Adviser no later than the date on which the papers are sent to the employee.

#### **14. The note-taker at formal meetings/hearings**

A written record of the proceedings is essential at every formal meeting. This is likely to be the Clerk to the Governors or a member of administration staff at the school. The note-taker will make a confidential record of the hearing but not of any confidential deliberations to determine a judgement at the end of the meeting/hearing.

The school does not support the audio recording of ill health capability meetings or hearings unless there are exceptional circumstances for doing so. Where exceptional circumstances exist, the agreement of all parties must be obtained. Covert recording is considered gross misconduct.

#### **15. Right to be accompanied**

An employee has the right to be accompanied and supported, at each formal stage of the procedure where action may be taken (including appeal), by a work colleague or an accredited Professional Association/Trade Union Representative.

The role of the Professional Association/Trade Union representative or work colleague is to:

- familiarise him/herself with the case
- assist the employee in preparing any case they wish to present
- confer with the employee before and after the meeting or hearing
- present and sum up the employee's case, as appropriate and as agreed with the employee
- address the meeting or hearing and ask appropriate questions, as agreed with the employee
- respond on the employee's behalf to any view expressed at a meeting or hearing; and
- ask for adjournment if necessary

The Professional Association/Trade Union representative or work colleague is not permitted to:

- (i) answer questions on behalf of the employee
- (ii) address the meeting or hearing if the employee indicates that he/she does not wish the Professional Association/Trade Union representative or work colleague to do so,
- (iii) prevent the school from explaining the case
- (iv) prevent any other person at a meeting or hearing from making his/her contribution.

Internal school Professional Association/Trade Union representatives or a work colleague are entitled to take a reasonable amount of time during normal working time to fulfil this responsibility. The Professional Association/Trade Union representative or work colleague should agree the amount of time required and when this can be taken with the Headteacher.

The employee should give advance notice if he/she is to be accompanied, and by whom. If the Professional Association/Trade Union representative or work colleague is unavailable at the time of the hearing, the employee should contact the individual that convened the meeting/hearing to postpone the meeting/hearing (once) to a time that is mutually convenient to all parties. Any postponement should be within a reasonable timescale and should not normally extend beyond 5 working days'.

An employee will not be subjected to a detriment by the school by reason of having acted as a companion in any ill health capability proceedings.

## **16. Formal ill health capability meeting**

While formal ill health capability meetings are more commonly used to address concerns relating to short term absence they may also be convened following an employees' return to work from long term absence. This will especially be the case where it is not the first period of prolonged absence to have occurred.

The meeting is intended to establish the facts. At this meeting the Headteacher or Line Manager will:

- (i) Identify the attendance concerns, support already given or considered, and the level of attendance required where there has been an Attendance Improvement Plan.
- (ii) Provide written evidence of the concerns identified (e.g. Self-Certification Sickness Absence and Return to Work Meeting form(s), other meeting notes, absence data, any medical information being used to determine whether, and if so what support the employee may benefit from.
- (iii) Consider and discuss any causes and reasons for the absences. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their attendance.
- (iv) After reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the Headteacher or Line Manager will decide upon the relevant outcome from the meeting:

Outcomes of the meeting, depending on the circumstances of the particular case, could (without limitation) include:

- The setting of an Attendance Improvement Plan (AIP), where one has not been set prior to entering the formal process.
  - First written warning and an AIP which is likely to be appropriate in most cases where there has been a persistent failure to meet satisfactory attendance levels, notwithstanding previous informal discussions
  - Final written warning and an AIP which is likely to be appropriate where, following a first written warning and an AIP, there has been a continued failure to meet satisfactory attendance levels or where there has been a serious failure to meet satisfactory attendance levels
  - That a hearing should be convened (in accordance with section 19) to consider the recommendation of dismissal with notice, which is likely only to be appropriate where despite an employee having already been given a first and/or final formal written warning and one or more AIPs, their attendance levels continue to fall below expectations.
- (v) Notes must be taken of the meeting and a copy given to the employee, but not of any deliberations.
  - (vi) After the meeting, the employee will be informed in writing of the school's decision within 3 working days'. Where a formal sanction (a warning or notice of dismissal) has been issued the decision letter must contain the right to appeal (the process for which is set out in section 24).

## **17. Duration of Warnings**

In circumstances where a first written or final written warning is issued it will be placed on the employee's personal file normally for a period of 12 months, unless the employee is notified to the contrary.

## **18. Formal ill health capability dismissal hearing**

**18.1** Dismissal with notice may be considered, without the need for first or final written warnings, where an employee has been or is likely to be absent for a prolonged period, where a reasonable period of recovery has been allowed for, and weighing up input from Occupational Health, in the schools' opinion; where a return to work in the short term is unlikely; where it is concluded that there are no reasonable adjustments or restrictions that would enable the employee to return to a work. Where possible these judgements should be made having sought advice from Occupational Health via the Schools' HR Advisory Team.

**18.2** Dismissal with notice may be considered where despite the employee having already received a first and/or final written warning for short term absence, and following one or more AIP their attendance levels continue to fall below expectations.

## **19. Arranging a formal ill health capability dismissal hearing**

Ill health capability dismissal hearings will be heard by either the Headteacher or a panel of 3 governors as appropriate in the circumstances.

The hearing allows the employee to prepare a response to concerns about their absence and make his/her case in the company of their Professional Association/Trade Union representative or a work colleague.

If an employee is unable to attend a dismissal hearing he/she may choose to provide written permission to the effect that his/her representative may act on full authority and he/she will accept any decision that their representative has been party to. He/she may also choose to provide a written response.

Alternatively, if he/she cannot attend for a genuine reason, and is not willing for his/her representative to act on their behalf, it may be reasonable to arrange another meeting (once). However, if the employee fails to attend for a second time, management can make a decision based on the facts and evidence gathered during the review period in the employee's absence.

The room to be used for the hearing should be large enough to accommodate all attendees. Tables are needed so that all present can write comfortably. The room should preferably be quiet and not overlooked. Two other rooms or quiet areas should be available for the two parties during adjournments.

Hearings should normally be held during normal working hours, but, where this is not possible, the hearing should begin as soon as possible after the end of the school day.

The employee must receive a minimum of 10 working days' notice in writing, a letter by recorded delivery or delivery by hand, stating:

- the purpose, time and place of the meeting;
- specific concerns, confirming that this is a formal meeting under the Health and Attendance Procedure;
- a copy of this procedure;
- who will be attending (e.g. Headteacher, employee);
- the right to be accompanied by an accredited Professional Association/Trade Union Representative or a work colleague;

- relevant documentation the school intends to present
- the requirement for confidentiality;
- the requirement for the employee to provide, at least 4 working days' before the hearing, all relevant documents that he/she intends to present.

The Headteacher or panel members, as appropriate, will be sent all of the papers to be presented, including a copy of the invite letter sent to the employee, not earlier than 3 working days' before the hearing. Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing.

## **20. Procedure for an ill health capability dismissal hearing**

The Headteacher or Chair of the Panel introduces those present and describes their status, reminds those present of the purpose of the hearing; that adjournment is possible; that a written record of the meeting will be made; and that the proceedings of the hearing are confidential.

- a) The case for the employer is presented. The employee or representative, and then the panel, may ask questions of the employer at the end of the presentation
- b) The response for the employee is presented. The employer, and then the panel, may question the employee at the end of the presentation
- c) When all the evidence has been heard, the person presenting on behalf of the school sums up, gathering together the points of the case, not introducing new evidence.
- d) The employee or representative sums up
- e) The two sides withdraw to enable the panel to discuss the case and make a decision regarding the outcome

The Headteacher's or panel's decision is normally conveyed orally by the Headteacher or Chair of the Panel in the presence of both parties and will be confirmed in writing within 3 working days'.

## **21. Factors which may be considered at the Hearing before making a decision**

The following list provides examples of factors which may be considered by the Headteacher or panel of Governors before making their decision. The list is neither exclusive nor exhaustive.

- a) The likelihood of the employee's absence record improving
- b) The nature, frequency and length of absence and the reasons for those absences
- c) Whether the School's procedures have been followed
- d) The possibility of alternative employment or duties and any adjustments or evidence of disability
- e) The effect the employee's absence is having on the School

## **22. The Ill-Health Capability Hearing Decision**

If the case for dismissal is not established, a warning appropriate to the circumstances of the case may be issued.

If the decision is dismissal, then the employee will be informed immediately and advised of the right of appeal. The decision of the Headteacher (or Governing Body Disciplinary Panel), the reasons for it and the appeal arrangements will be confirmed in writing to the employee within 3 working days'.

### **23. Appeal**

If the employee wishes to appeal against the school's decision at any stage of the process (including the level of any sanction imposed) he/she must do so in writing to the person specified in the decision letter, stating the full grounds of appeal, within 7 calendar days' from receipt of the letter setting out the school's decision.

An appeal will be heard by the Headteacher (only in cases where a warning was issued by a line manager) or by a panel of 3 governors, not involved in the original hearing.

The employee's letter to lodge the appeal must be accompanied by detailed grounds for appeal e.g.

- Perceived unfairness
- Severity of penalty
- Procedural irregularities
- New evidence coming to light which is relevant to the dismissal decision

An appeal is a review of the decision made by the Headteacher/panel of governors. It is not a re-hearing.

The outcomes open to the Appeal Panel are to:

- uphold the appeal;
- reject the appeal in full;
- reject the appeal in part and impose a lower level of sanction;

The Headteacher/Chair of Panel, i.e. the person or a representative of the panel that heard the original case will normally present the case at any appeal against a warning or ill health capability dismissal decision. This will set out the reasoning behind the decision and outlining the considerations given in reaching that decision as applicable to the reasons for appeal.

In all cases the complete set of paperwork presented at the original hearing/meeting, any minutes taken, and the outcome letter issued to the employee will be shared with the appeal panel save where redactions are required.

### **24. Procedure for an ill health capability appeal hearing**

The Headteacher or Chair of the Appeal Panel introduces those present and describes their status, reminds those present of the purpose of the hearing; that adjournment is possible; that a written record of the meeting will be made; and that the proceedings of the hearing are confidential

- a) The case/grounds of appeal for the employee are presented. The employer and then the panel may ask questions of the employee or their representative at the end of the presentation
- b) The response for the employer is presented stating the reasoning behind the sanction imposed. The employee or their representative, and then the panel, may question the employer at the end of the presentation

- c) When all the evidence has been heard, the employee or representative sums up, gathering together the points of the case, not introducing new evidence
- d) The person presenting on behalf of the school sums up, gathering together the points of the case, not introducing new evidence
- e) The two sides withdraw to enable the appeal panel to discuss the case and make a decision regarding the outcome

The Headteacher's or appeal panel's decision is normally conveyed orally by the Headteacher or Chair of the Panel in the presence of both parties and will be confirmed in writing within 3 working days.

## Appendix 1

### Sick Pay Entitlement

| Teachers                                    |   |
|---|---|
| During the first year of service            | Full pay for 25 working days and after completing 4 calendar months' service half pay for 50 working days |
| During the second year of service           | Full pay for 50 working days and half pay for 50 working days   |
| During the third year of service            | Full pay for 75 days and half pay for 75 working days   |
| During the fourth year and successive years | Full pay for 100 working days and half pay for 100 working days   |

**Note 1:** For Teachers, working days are the days defined as “directed time” (currently 195 per school year).

## Appendix 2

### Sick Pay Entitlement Support Staff

| Table B   |   |
|---|---|
| Support Staff in Voluntary Aided, Foundation or Academy Schools not covered by the HCC Collective Agreement   |   |
| During the First year of service  | 1 Month full pay and, after completing 4 months' service, 2 months half pay |
| During the second year of service   | 2 months' full pay and 2 months' half pay                                   |
| During the third year of service  | 4 months' full pay and 4 months' half pay                                   |
| During the fourth & fifth year of service   | 5 months' full pay and 5 months' half pay                                   |
| After 5 years' service  | 6 months' full pay and 6 months' half pay                                   |
| <p><b>Note 1:</b> For occupational sick pay entitlement record purposes (and without prejudice to the National Council's arrangements for self-certification days and to any local agreements on “qualifying days” for statutory sick pay purposes) “one month” is deemed to be equivalent to 26 working days, Saturday being reckoned in all cases as a working day.</p>                       |   |
| <p><b>Note 2 :</b> If an employee has suffered an injury during the course of his/her work duties, and this has been confirmed in writing by the Department of Work and Pensions (DWP), then the employee is entitled to receive the first 6 months of his/her absence as full pay. If they are still absent after the first 6 months, then his/her normal sick pay entitlement will begin.</p> |   |

## Appendix 3 - Self Certification Sickness Absence and Return to Work Meeting

### User Guidance Notes

This form should be completed using block capitals and placed on the employee's school file. In



- When an absence appears to have a recognisable pattern, for example frequent absence around a weekend
- When an employees' sickness absence is for a continuous period of at least 28 calendar days
- When there are a series of absences which impact on service delivery
- Has an Attendance Improvement Plan been set recently (this may be set prior to trigger points being met).

**Yes**  (If yes, consider arranging a Formal ill-health Capability Meeting and inform employee that they *may* be issued with a warning at the Formal ill-health Capability Meeting)

**No**

Attendance Improvement Plan set

Details of support offered

Details of the impact of the absence on the school

Referred to Occupational Health

**Part Four – Authorisation**

I certify I was absent from work due to sickness as detailed on this form.

**Please note: Knowingly making a false statement may result in disciplinary action being taken and sick pay being terminated.**

|                     |      |  |  |  |  |   |   |  |
|---------------------|------|--|--|--|--|---|---|--|
| Employee Signature: | Name |  |  |  |  |   |   |  |
|                     | Date |  |  |  |  | 2 | 0 |  |

I certify that I have discussed this absence with the employee and that the necessary certifications have been completed.

|                     |      |  |  |  |  |   |   |  |
|---------------------|------|--|--|--|--|---|---|--|
| Managers Signature: | Name |  |  |  |  |   |   |  |
|                     | Date |  |  |  |  | 2 | 0 |  |