

Attendance Management Policy and Procedure

September 2016

This policy and procedure has been produced by One Education’s HR and People service. The HR and People team provides management and HR support and advice to schools and academies purchasing their services under an agreed Service Agreement. For further information please contact the HR and People team via the HROne Helpline: 0844 967 1112 (local rate from landline) or HROne Helpline Email: hrpeople@oneeducation.co.uk Website: www.oneeducation.co.uk

This document is recommended for adoption by all maintained schools including community, voluntary controlled, community special, maintained nursery, foundation, foundation special and voluntary aided schools. This document is also recommended for adoption by academies and free schools (modified as appropriate and taking into account the particular circumstances of the relevant academy or free school). References in this document to schools include a reference to academies and free schools unless otherwise stated and references in this document to the Headteacher include a reference to an academy or free school Principal.

Document Control	
Title	Attendance Management Policy and Procedure
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Under the public sector equality duty, all schools/academies must have due regard to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it and to foster good relations across all protected characteristics. This means schools/academies must take into account equality considerations when policies are being developed, adopted and implemented. The HR and People team regularly reviews all policies and procedures which are recommended to schools/academies to ensure compliance with education and employment legislation including the Equality Act 2010. Consultation with schools/academies is an important part of this review process. Headteachers, Principals and Governing Bodies are asked to contact the HR and People team via the HROne Helpline if they believe there are any negative equality impacts in their school/academy in relation to the application of this policy/procedure.

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Section 1 - MANAGING STAFF ATTENDANCE POLICY

Introduction

This policy document on attendance management is consistent with the employment powers, duties and responsibilities of the governing body as set out in current Education legislation; Articles of Government for the school and conditions of service for teaching and support staff. The policy is recommended for adoption by schools including Academies and Free schools subject to any specific agreements or requirements.

For the purpose of this policy, any reference to the Governing Body includes Governing Boards and/or Trust Boards where applicable. Any reference to Headteacher includes Principal where applicable.

This policy sets out the framework within which the governing body's policy on attendance management will operate in order to achieve maximum benefits for pupils, parents and staff. It explains why it is necessary to adopt an attendance management policy and sets out the principles on which it is based. It describes the information about employee attendance that will be collected and under what circumstances it will be used. It emphasises that the process will be underpinned by the use of objective evidence which will be subject to review and possibly inspection. It also identifies the roles and responsibilities of the governing body, the headteacher and the employee which need to be clearly understood to ensure that the policy works effectively and efficiently

PURPOSE OF THE POLICY

The Governing Body values the contribution of all its employees to the effective running of the school and the delivery of teaching and learning to pupils. Most staff maintain a very good attendance record over a long period of time. Headteachers and Governors will wish to recognise this and build upon existing good practice. However, whilst recognising that employees may be prevented from attending work through ill health, the school has a duty to maintain provision of education to pupils and to minimise disruption in delivery of that education.

The Governors are, therefore, committed to managing attendance and sickness absence and creating a culture within which all employees work to maximise attendance for the benefit of themselves, pupils, the community and other stakeholders.

The School will achieve this through:-

- promoting a high attendance culture
- promoting the health, safety and well-being of all employees;
- monitoring levels of sickness absence for individuals, teams, departments, and the school as a whole; and
- implementing procedures to provide support for employees when absent, whilst addressing unjustified and/or high levels of sickness absence.

SCOPE

This Policy covers the management of both short-term absences and long-term sickness absence. This Managing Attendance Policy applies to all staff employed by the Governing Body.

If attendance issues arise with staff in the course of their employment including their induction or probationary period of service schools should contact One Education HR and People service for advice. HR&People can provide training and support in implementing this policy and procedure. HR&People Advisers can advise the school on good practice, highlight any legal requirements and discuss proactive and preventative steps in the management of attendance.

PRINCIPLES

Within this Policy the Governing Body will:-

- deal with sickness absence in a way that is non-discriminatory and in accordance with the School's commitment to Equal Opportunities;
- ensure a fair and consistent treatment of all employees who are absent from work;
- seek medical advice from appropriate practitioners where appropriate;
- make reasonable adjustments to take account of any disability of an employee in accordance with the Equality Act 2010 and the related Disability Equality Duty and Code of Practice; and
- conduct sickness absence cases with respect for confidentiality and in accordance with the requirements of the Data Protection Act and the Access to Medical Records Act.

No employee should feel under pressure to return to work while unfit. This policy will not be used to place such pressure on individuals, however if despite continuing support the employee cannot sustain reasonable levels of attendance dismissal for unsatisfactory attendance or ill health dismissal will be given serious consideration.

ROLES AND RESPONSIBILITIES

Employees are required to:-

- attend work and fulfil their contractual obligations;

- comply with the school's sickness absence reporting procedure;
- inform school as soon as possible of any changes in their condition that affects their ability to do their job or alters the timescales for their return to work
- leave contact details when absent due to sickness;
- advise the school of any outstanding work matters;
- be available during normal working hours to meet with the Headteacher or nominated person to discuss their absence;
- share information with the school with regard to their absence;
- attend medical referrals/appointments/case conferences;
- attend Return to Work interviews and Attendance Monitoring Reviews (AMRs);
- co-operate with all efforts to identify and implement reasonable adjustments;
- maintain regular contact with the School in addition to the submission of 'fit' notes as appropriate.
- comply with safe working practices and procedures; and

It is expected that staff will participate in treatment programmes, e.g. Cognitive Behaviour Therapy (CBT), Physiotherapy, etc. where it has been indicated that such programmes will improve their health.

Headteachers and/or other nominated persons

will be responsible for monitoring, managing and controlling absence by:-

- creating a culture where people want to attend work;
- monitoring management information, identifying trends and patterns and taking appropriate action;
- exploring reasons for absence;
- maintaining regular contact with employees;
- conducting meaningful Return to Work interviews (see Appendices 3 & 4) and AMRs without delay;
- arranging Attendance Management Hearings where appropriate;
- ensuring the preparation and completion of all documentation, including confirmation letters;
- seeking advice where necessary;
- identifying, considering and implementing reasonable adjustments where appropriate;
- considering the benefits of a referral to an occupational health provider (see Appendix 5);
- initiating referrals to an Occupational Health provider;
- attending case conferences and making provisions for agreed actions to be carried out;
- taking a consistent, but not necessarily uniform approach to managing absences;
- provide attendance statistics to the Governing Body each term.

HR&People Service (under Service Agreement) will:-

- provide clear, up-to-date guidelines about managing attendance and capability issues and other relevant policies;
- provide relevant information as available;
- issue advice to schools as requested;
- advise on the employment aspects of managing sickness absence cases;
- advise on strategies to reduce sickness absence on an individual or overall basis;
- advise/assist schools on the correct implementation of the policy and procedure when necessary;
- highlight any problem areas and bring these to the attention of the appropriate person in school;
- assist the Headteacher/nominated person by attending meetings where required.

The responsibilities of the Governing Body are to;

- Establish a relevant Committee structure and identify how delegation of functions to the Headteacher will be managed;
- ensure that the school has a policy on managing attendance;
- review the policy annually;
- monitor and review overall staff attendance statistics each term;
- ensure appropriate budget provision for supply staff and staff welfare;
- perform their statutory duties under the Health and Safety at Work Act 1974 (as amended) and in particular the Management of Health and Safety at Work Regulations 1999 (as amended);
- manage any attendance issues relating to the headteacher;
- ensure that the headteacher carries out his/her responsibilities to implement the policy appropriately

Occupational Health Service Provider

An Occupational Health provider will offer advice on how to support the employee to facilitate an early safe return or how best to promote attendance within school.

Occupational Health Advisers will:-

- advise school with regard to conditions falling under the disability provisions of the Equality Act 2010;
- assess the physical and mental fitness of employees and advise school on what work an employee can undertake within the parameters of their medical condition;
- seek to obtain medical information from GP's and Specialists and make onward referrals as appropriate (including Occupational Health Physician, physiotherapy, counselling);
- advise school on how the ill health of an employee can best be managed, to facilitate a speedy return to work;
- advise, when possible, on the expected length of recovery periods and/or return to work dates;
- advise schools and employees at case conferences;
- advise on the need to seek consent to access medical records;

- advise school of any failure to attend appointments;
- provide sickness management reports;
- recommend for consideration school actions that are based on the medical circumstances of an employee.

Further advice on managing attendance issues can be obtained from the government supported independent assessment service, the **Fit for Work Service**. The service helps employees who are absent from work for more than four weeks to return to work sooner. There is no limit on the number of employees referred but an individual employee can only be referred once in any twelve-month period.

CONDUCT ISSUES

Failure to comply with the provisions of the Attendance Management Policy and Procedure, for example by:-

- providing false information;
- failing to comply with the reporting procedure;
- failing to attend medical appointments; or
- failing to provide medical certificates when due

will be subject to a separate investigation. Where it is believed that the policy may have been breached disciplinary action (up to and including summary dismissal) may be taken under the School's Disciplinary Procedure.

Failure to comply may also lead to loss or suspension of pay where an investigation establishes that the requirements of the Attendance Management Procedure have not been followed nor has the employee taken reasonable steps to comply with the Procedure.

RECORDS MANAGEMENT

Each period of absence will be formally recorded and information on an employee's absence will be reviewed by the Headteacher or nominated person. Where appropriate this information will be discussed with the employee or provided to their line manager to assist them in promoting a high attendance culture.

The employee's absence records may be used as part of any review of absence or any other occasion where the school believes that the information is of material relevance to any decisions regarding the employee.

Absence records constitute confidential information and will be retained in accordance with the Attendance Management Policy and Procedure and any other related statutory acts such as the Data Protection Act.

Section 2 - ATTENDANCE MANAGEMENT PROCEDURE

NOTIFYING ABSENCE & RETURN TO WORK

In order to ensure the effective running of the school and the delivery of teaching and learning to pupils is maintained, employees must inform the school's nominated person of their inability to attend work and the reason for this on the first day of absence. This will be by the time they are due to either commence work or at an agreed time notified locally by the school. A draft reporting procedure for consideration by school is set out at Appendix 2.

Employees must report the absence in person or by telephone. In most cases e-mails or text messages are not acceptable unless previously agreed that it is not possible to communicate by telephone. Absence should not be reported by anyone other than the employee unless there are exceptional circumstances.

In order to assist school to assess the likely duration of absence and arrange the necessary cover, employees must specify the length of time they expect to be absent. If this is not possible the employee must follow the reporting procedure on **each** day of absence.

If the nominated person is not available then the employee must contact another senior person in school and leave a contact number.

If for some reason the nominated person is not available, the employee should expect a telephone call from the nominated person or other senior person at home later to establish a reason for the absence.

The first three days of absence can be notified by telephone. From the fourth day the employee "self certifies" their absence, normally by use of the Return To Work proforma at Appendix 4.

If the absence continues for more than seven days (including non-working days) then from the eighth day of absence a Medical Certificate (Fit Note) is required from the employee's doctor and must be sent in to school no later than four days after the expiry of the previous self-certified period, or the expiry of a previous fit note.

In cases where an employee returns to work prior to the expiry of a Medical Certificate, then the employee must provide, before returning to work, a signing off note. The Return to Work procedural advice is at Appendix 3 with a proforma return to work form at Appendix 4

Failure to follow the reporting procedure will be investigated and, where an employee has not taken reasonable steps to comply with the attendance

management procedure, this may lead to absence from work being considered as unauthorised, resulting in loss of pay and possibly disciplinary action.

DEALING WITH SHORT TERM ABSENCE

Triggers

The purpose of trigger points is to alert school to undertake a review of an employee's record of absence and assess whether further action is necessary. This requires a full consideration of each individual's circumstances and the nature of their absences.

Reasonable trigger points that will prompt a school to examine an employee's absence record will be where, during the course of a school term or other specified period, an employee is absent:-

- for four or more days in the last term;
- on three or more occasions in the last term.

In addition, the Headteacher or nominated person may decide to examine an employee's absence record where there is a specific cause for concern. For example:-

- recognisable patterns of absence e.g. on Fridays and/or Mondays, before or after Bank Holidays/school closure periods; or
- increase in absence following expiry of an Improvement Notice or an Attendance Monitoring Warning.

Modification of these trigger points may be considered when reviewing an individual's personal circumstances (but see Appendix 1).

When a trigger point is reached the Head Teacher or nominated person should endeavour to meet with the employee to ascertain the reasons for the employee reaching the trigger and whether support to maintain their attendance is appropriate. This meeting can be held separate to or in conjunction with a return to work meeting.

NB Employees are entitled to be accompanied at the meetings identified below and full details of this entitlement are detailed below.

First Attendance Monitoring Review (AMR)

If trigger points are reached, concerns regarding an employee's attendance persist and/or a recurring, recognisable pattern of absence emerges e.g. Fridays and/or Mondays, before or after Bank Holidays or school closure periods, an AMR will be held as soon as possible to:-

- review previous attendance record
- review health issues previously discussed
- explain the impact of absence on service delivery and emphasise the importance of good attendance;
- explore the reasons for absence;
- seek to identify any underlying cause;
- discuss and agree any support mechanisms needed;
- consider any reasonable adjustments (see Appendix 1).
- review any medical advice provided from whatever source;
- review support/reasonable adjustments provided;
- identify improvement needed; and
- warn of possible consequences if improvement is not achieved.

Possible outcomes of Attendance Monitoring Review (AMR):-

- appropriate review/monitoring period established;
- identification of improvement needed Attendance Management Warning (as appropriate) issued (see para. 2.5 below; and/or
- support mechanisms established; and/or
- reasonable adjustments agreed; and/or
 - referral to the Occupational Health provider in order to :-
 - assess current medical position;
 - establish whether there is any underlying medical reason;
 - establish whether the reason for the absence(s) falls within the disability provisions of the Equality Act 2010; and/or
- take no further action (*only in exceptional cases should no action be taken.*)

A letter will be sent to the employee normally within 10 working school days of the meeting, confirming the points discussed at the AMR and any actions identified. Identified actions will be implemented as soon as possible.

If the employee's attendance improves to the required standard for the above review/monitoring period the employee will be removed from the Attendance procedure. It is however expected that the improvement will be sustained and if it is not then the procedure will recommence at the stage it stopped.

Attendance Management Warning (AMW)

Should an Attendance Management Warning be issued, the employee will be informed of the right to appeal.

The employee will also be cautioned that if the improvement identified is not achieved then a further AMR may need to be held.

Once targets are met they must be sustained for a minimum of 12 months. Failure to do so will recommence the procedure at the stage it had reached.

Second Attendance Monitoring Review (AMR)

A second AMR will be held if:-

- triggers set in the Attendance Management Warning are hit; or
- insufficient improvement is achieved during the review period established at the AMR; or
- a recurring, recognisable pattern of absence emerges.

The purpose of this meeting is to:-

- explain impact of absence on service delivery and emphasise again the importance of good attendance;
- review issues discussed at the previous Attendance Monitoring Reviews;
- review the overall level of absence;
- review any medical advice provided from whatever source;
- identify improvement needed;
- warn of possible consequences if improvement is not achieved;
- review support/reasonable adjustments provided.

Possible Outcomes

- identification of improvement needed and a Final Attendance
- Management Warning issued where considered appropriate (see para. 2.7 below);
- further review/monitoring period established;
- referral to the Occupational Health provider in order to re-assess medical position.

A letter will be sent to the employee normally within 10 working school days of the meeting confirming the points discussed and actions identified. It is important to implement any actions identified as soon as possible.

Final Attendance Management Warning

Should a Final Attendance Management Warning be issued, the employee will be informed of the right to appeal. (See para. 5 below.)

The employee will also be cautioned that if the improvement identified is not achieved then an **Attendance Management Hearing (AMH)** may be held which may result in a decision to dismiss on notice.

Once targets are met they must be sustained for a minimum of 12 months. Failure to do so will recommence the procedure at the stage it had reached

N.B. Additional meetings or discussions (which must be documented) can be held at any stage, outside of the formal AMR meetings, to discuss support mechanisms etc.

Consideration of access to pension benefits on the grounds of ill health.

Where the school reaches the stage of considering dismissing an employee on the grounds of ill health there is a requirement to consider whether the employee is entitled to access their pension benefits if they are members of the LGPS. Please contact your LGPS pensions team and refer to One Education HR for advice. For support staff who have their pension administered by MCC please read our Early Release of Pension Benefits guide for details of the criteria and process that schools **must** follow prior to holding an Attendance Management Hearing.

Attendance Management Hearing (AMH)

The employee and his/her representative will, no later than 10 working days before the Attendance Management Hearing, be informed in writing of the date, time and venue of the hearing. The letter will set out the detailed reasons for the hearing and copies of any documentation it is intended to rely on will be circulated with the written notification of the hearing. Additionally the written notification should caution the employee that the hearing could result in a decision to dismiss.

The Attendance Management Hearing is commonly known as a Regulation 7 hearing. This Regulation is a part of “The Education (Health Standards) (England) Regulations 2009”.

The school’s case will be presented to the Headteacher or Governors Committee (dependent upon the procedures adopted by the Governing Body) together with all documents relevant to the employee’s health and attendance. Any representation made by the employee or the employee’s representative, or any written submission made in the employee’s absence will be given due consideration before any decision is taken.

The Headteacher or Governors Committee (dependent upon the procedures adopted by the Governing Body) will consider:-

- the employee’s overall attendance record;
- the impact of the level of absences on the school;
- representations from the employee;
- whether the reason for the absence(s) falls within the disability provisions of the Equality Act 2010;
- the management of the case;
- the medical advice received;
- the support/reasonable adjustments considered and/or provided;
- any further action that can be taken;
- options for redeployment within the school on medical grounds;
- whether ill health retirement has been considered.

Possible Outcomes of an Attendance Management Hearing

- further medical evidence sought;
- consideration of further reasonable adjustments;
- consideration of alternative employment;
- further Attendance Management Warning issued with further review period established;
- dismissal with notice in accordance with the relevant school procedure adopted by the Governing Body.
- Early release of pension benefit where applicable [contact your LGPS pensions team and One Education HR for assistance].

The school will write to the employee within 10 working school days of the meeting, confirming the points discussed and actions identified and, if a further Attendance Management Warning or dismissal is the outcome, informing him/her of the right to appeal (see para. 5 below).

DEALING WITH LONG TERM ABSENCE

Absences of more than 10 consecutive working days are considered long term in the majority of cases but this figure can be adjusted depending upon the circumstances.

When an employee is absent from school due to sickness it is important that regular contact is maintained so that the employee does not feel isolated, vulnerable or out of touch. The school will use the contact to update the employee on issues currently live within school and also to identify the need to reallocate work or resources so that teaching & learning and other support to pupils is maintained.

Where possible and appropriate an AMR will be held with the employee after the first four weeks' absence, and then every four weeks in order to discuss the employee's absence, including the issues identified below:-

- explore reasons for absence/identify progress and/or any appropriate support;
- seek to identify any underlying cause/whether the Disability section of the Equality Act applies;
- ask about treatment and/or specialist help being received;
- establish if date for return to work can be given;
- establish review periods;
- consider seeking an opinion from an Occupational Health Adviser, explaining the purpose to the employee (see Appendix 5);
- bearing in mind any disability issues and/or medical advice received, consider:-
 - reasonable adjustments
 - other support mechanisms
 - redeployment within school on medical grounds
 - ill health retirement
 - structured/phased return to work
 - explain the consequences of continued absence.

Where an employee cannot or does not attend an AMR at school, careful consideration should be given to meeting the individual in their home, at another agreed location, or, if this is not possible, conducting a review by correspondence, telephone and/or holding a review in their absence.

The points discussed and actions identified at the AMRs will be confirmed in writing to the employee within 10 days of the meetings.

Consideration of access to pension benefits on the grounds of ill health.

Where the school reaches the stage of considering dismissing an employee on the grounds of ill health there is a requirement to consider whether the employee is entitled to access their pension benefits if they are members of the LGPS. Please contact your LGPS pensions team and refer to One Education HR for advice. For support staff who have their pension administered by MCC please read our Early Release of Pension Benefits guide for details of the criteria and process that schools **must** follow prior to holding an Attendance Management Hearing.

Attendance Management Hearing

Unlike when dealing with short term absences the medical information relating to a long term absence is usually much more comprehensive.

Where all options have been considered without success, an Attendance Management Hearing will be held. In cases where pension benefits are being awarded it may be more appropriate to hold a meeting rather than a hearing. This will be dependent on the nature of the case and determined on a case by case basis.

The employee and his/her representative will, no later than 10 working days before the hearing, be informed in writing of the date, time and venue of the hearing. The letter will set out the detailed reasons for the hearing and copies of any documentation it is intended to rely on will be circulated with the written notification of the hearing. Additionally the written notification should caution the employee that the hearing might result in a decision to dismiss on notice.

The school case will be presented to the Headteacher or Governors Committee together with all documents relevant to the employee's health and attendance. Any representation made by the employee or the employee's representative, or any written submission made in the employee's absence will be given due consideration before any decision is taken.

The Attendance Management Hearing will be heard by the Headteacher or Governors Committee who will review the case and consider:-

- the overall absence record;
- the impact of the absence on the service;

- the medical advice received, including whether the reason for the absence(s) falls within the provisions of the Disability Discrimination Act;
- the support/reasonable adjustments provided and determine whether these were sufficient;
- the management of the case;
- any further action that can be taken;
- options for redeployment on medical grounds (see 8.1 below);
- whether ill health retirement has been considered;
- establishment of a possible further review period;
- representations from the employee;
- options for redeployment;
- dismissal.

The school will write to the employee within ten working days of the meeting, confirming the points discussed and actions identified and, if dismissal is the outcome, informing him/her of the right to appeal. (See para. 5 below.)

HR&People can provide a clerking role to the hearing officer or Committee.

RETURN TO WORK

Upon return to work, **irrespective of the length of absence**, the Headteacher or nominated person must arrange to meet privately with the employee within two days of the return to work and carry out a Return to Work interview. (For guidance on how to conduct a Return to Work Interview see Appendix 3.)

RIGHT OF APPEAL

An employee issued with an Attendance Management Warning will have the right to appeal to a nominated person, including, if the Headteacher has taken the decision, a nominated Governor.

In cases of dismissal with notice, the employee will have the right to appeal to a Committee of Governors (dependent upon the procedures adopted by the Governing Body). There is no further right of appeal after this stage has been completed.

Where the employee wishes to appeal the decision made in relation to the release of pension benefit, they can appeal within six months of the date of the decision letter. Appeals must be submitted in writing to the Chair of Governors. Please refer to your LGPS pensions' team and One Education HR for advice.

In order for an appeal to be considered the employee must submit in writing the grounds on which they base their appeal within the agreed time limit. The grounds must be sufficient to justify the arranging of the appeal.

NB At the appeal hearing the employee and/or their representative will present their case, based on the grounds submitted and with any new evidence, first and the school will respond.

SANCTIONS/WARNINGS

A warning issued under the Attendance Management Policy will remain live for 12 months and run parallel to any live (current) disciplinary warnings on the employee's record. They will not be used for 'totting up' purposes should any disciplinary sanction/warning be imposed under the School's Disciplinary Procedure.

RIGHT TO REPRESENTATION

Employees may be represented, if they so wish by a trade union representative, or colleague at AMRs and Attendance Management Hearings.

If the representative cannot attend on a proposed date for a meeting, an alternative representative should be nominated or the meeting re-arranged to a time and date which is **no more** than five working days after the proposed date.

It is the responsibility of individual employees to arrange representation and if this cannot be arranged within the timescales set out above, and there are no accepted extraordinary or mitigating circumstances, then the school should proceed with the scheduled meeting.

REDEPLOYMENT

Where the Occupational Health or other health provider recommends redeployment on medical grounds the Headteacher or nominated person must consider whether suitable alternative employment is available **within the existing staffing structure of the school**. There is no procedure for redeploying across schools or into the Local Authority (see Appendix 1).

Hard Federations and Multi Academy Trusts should consider all locations within the Federation/Trust when considering medical redeployment.

DISMISSAL

Where all appropriate options have been explored, including all options under the provisions of the Equality Act, the dismissal of an employee is one which will need to be considered. Any proposal to dismiss will be considered under the auspices of the Education (Health Standards) (England) Regulations 2009, section 7. To dismiss fairly the school has to show:-

- the reason (or the principal reason) for dismissal; and
- that, in the circumstances, the school acted reasonably in treating it as a sufficient reason for dismissal.

Where the decision to dismiss is made, the dismissal will be with appropriate contractual notice.

Section 3 - APPENDICES

Disability Discrimination

Notifying/Reporting Procedure

Return to Work procedure

Return to work pro-forma for use by line managers

Appendix 1 - DISABILITY DISCRIMINATION CONSIDERATIONS FOR SCHOOL

- 1.1 The Equality Act 2010, prohibits an employer from discriminating against an employee by dismissing or otherwise treating that employee unfavourably because of his or her disability. There are few situations where discrimination can be justified under the Act.
- 1.2 Dismissal will hardly ever be justified unless an employer has obtained a detailed medical examination of the employee, to determine the full extent of the disability, in order to decide whether any reasonable adjustments are an alternative to dismissal.
- 1.3 The Disability Equality Duty 2006 places a duty on all public authorities to promote equality for disabled people in every area of their work.

2. DEFINITION OF DISABILITY

- 2.1 A person has a disability for the purposes of this Act if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The impairment must be long term i.e. has lasted or likely to last at least 12 months.
- 2.2 The definition of disability under the Equality Act 2010

In the Act, a person has a disability if:

- they have a physical or mental impairment
- the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities

For the purposes of the Act, these words have the following meanings:

- 'substantial' means more than minor or trivial
- 'long-term' means that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or fluctuating conditions)
- 'normal day-to-day activities' include everyday things like eating, washing, walking and going shopping

3. REASONABLE ADJUSTMENTS

3.1 When a disability is identified, in accordance with the Equality Act, an employer has a duty to make reasonable adjustments to prevent disabled employees being placed at a disadvantage compared with staff who are not disabled.

3.2 The social model of disability reflects that, rather than the physical/medical limitations of an impairment, it is often environmental factors which unnecessarily lead to social restrictions. This principle underpins the duty to make reasonable adjustments and understanding this assists in avoiding discrimination. It is as important to consider which aspects of employment and occupation create barriers for a disabled person as it is to understand the particular nature of an individual's disability.

3.3 Some examples of reasonable adjustments are:-

- modifying the triggers when reviewing an employee's record of absence;
- adjusting working arrangements;
- altering working hours;
- changing work location;
- changing duties;
- reallocating tasks;
- making adjustments to physical environment/premises;
- acquiring or modifying equipment;
- providing appropriate training;
- modifying instructions or reference manuals;
- providing supervision;
- allowing authorised absence for medical appointments, assessment, treatment, and counselling or rehabilitation activities.

3.4 A reasonable adjustment may also involve transferring the employee to fill a suitable existing vacant post. It will be necessary to obtain advice from the Occupational Health provider regarding the tasks which the employee is capable of undertaking and in all such cases advice should also be sought from One Education HR and People.

3.5 All decisions taken with regard to determining whether an adjustment is reasonable or not, as outlined in the Equality Act's criteria, must be documented. The rationale for reaching such decisions should also be documented.

4. SHORT TERM ABSENCE

- 4.1 An employee's disability may have an impact on their attendance and cause intermittent short term absences.
- 4.2 In those cases where there is a known disability, as defined, schools need to determine whether each absence may be attributed to that employee's disability. In many instances the employee will tell the school which absences are not directly related to their disability and this will assist the school in determining whether further actions need to be taken.
- 4.3 Where there have been a number of short term absences, meeting the attendance triggers, and it is unclear which of those absences, if any, relate to the employee's disability Occupational Health advice must be obtained.
- 4.4 The referral must clearly identify full details of each absence including reason for the absence, dates and relevant information provided by the employee at the time of their return to work.
- 4.5 The Occupational Health Advisor will inform the school of those absences which, in their medical opinion, relate to the employee's disability. This information will enable the school to determine their actions.
- 4.6 It is important to note that it is possible to discriminate where an employer could have been expected to know of a disability even if the individual has not directly advised the school. Further guidance may be sought from HR&People.

5. LONG TERM ABSENCE

- 5.1 When looking at potentially dismissing employees with long term absence problems it is essential to consider the Equality Act as well as unfair dismissal liabilities.
- 5.2 It is a requirement that schools make proper investigations whenever an employee is absent for a significant period. Long term absence may indicate the likelihood of disability and therefore Occupational Health advice may be useful to inform further management actions.
- 5.3 All Referrals made to the Occupational Health provider, irrespective of whether absence has occurred or the length of any absence, will be given consideration in relation to the Equality Act and wherever possible the Occupational Health provider will indicate whether the provisions of the Act apply. Schools will be informed of the medical opinion, on the basis of the information available at that time, in the Response Form.

6. CONSIDERATION OF BRINGING THE EMPLOYEES EMPLOYMENT TO AN END

- 6.1 The dismissal of a disabled employee, on the grounds of his or her disability, or subjecting an employee to any other detriment on the grounds of his or her disability is unlawful under the disability provisions of the Equality Act. However, where an employee's disability makes it impossible for him/her to perform the main functions of their job, and all reasonable adjustments have been fully explored, termination of employment may be justified.
- 6.2 In addition to considering whether suitable alternative employment is available consideration of ill health retirement must also be considered in accordance with the relevant regulations.

In all cases HR&People should be consulted before starting any dismissal process.

Appendix 2 - NOTIFYING/REPORTING PROCEDURE

For schools who do not currently have a written reporting procedure the pro-forma details outlined below form a generic procedure recommended for consideration and adoption. Some schools may find they have specific circumstances e.g. earlier start times that require a local approach to reporting absence.

In any event, Headteachers are advised to reconsider existing arrangements and develop and publish local protocols to address specific problem areas.

Day 1

- 1 All staff must notify school/or a nominated person (delete as appropriate or name the nominated person) on the first day of absence before (This time will vary from school to school and might even vary between staff groups depending on the particular needs of the school).
- 2 Staff should report the absence in person or by telephone. E-mails or text messages are not acceptable (unless previously agreed that it is not possible to communicate by telephone). Absence reports should not be made by other people (partners or family friends) unless there are exceptional circumstances.
- 3 If the nominated person is not available the employee must ask to speak to another senior member of staff.
- 4 If for some reason the nominated person or other senior member of staff is not available, the employee must leave a contact number and expect a telephone call to them at home to establish a reason for absence.
- 5 **Employees must give the following details:**
 - 5.1 Cause of absence - note confidentiality rule. If the employee is unable to discuss the reason for absence with the nominated person the employee must speak to the Headteacher. The Headteacher will not divulge any confidential information but will advise the nominated person if the request for confidentiality is reasonable. (This would be in unusual circumstances only).
 - 5.2 Likely date of return to work - although this may change following a visit to the doctor for example, the employee must inform the school of a likely date or if/when they are intending to visit a doctor.

- 5.3 Any appointments, outstanding work, deadlines, lesson plans, training that will need re-arranging or reallocating.
- 5.4 Where an employee is not able to give an expected date of return they must ring each day to keep the school updated on their health/absence.
- 5.5 Failure to report absence in the manner described above may result in an employee losing pay and/or being subject to formal disciplinary action.

Day 2

Employees who have not given a likely date of return must phone the nominated person every day.

Day 4

The employee must provide written reasons for their absence (self-certified absence). This requirement is usually achieved when they complete their return to work interview form but can also be achieved by the provision of a letter.

Day 8 onwards

The employee must:

- 1 Obtain a medical certificate (Fit Note) from their doctor and tell the school that they have this. They should state the date it has been signed as well as an expected date for return to work and identify any restrictions or otherwise detailed in the note. If they have not got a medical certificate they should inform the school of their GP appointment and arrange to make contact after this.
- 2 Send the certificate to the school. It is essential that the certificate covers the whole period of absence. The school must be contacted immediately when a new certificate has been issued. The new certificate must arrive within 4 days of the previous one expiring.

- 3 For the purpose of Medical Certificates all days including weekends and Bank Holidays are counted.

Schools must:

- Ensure they have all the relevant information from the employee.
- Send the original certificate to the payroll within the required deadlines.
- Make a record of the key points of any discussion.

Failure to produce a medical certificate may result in an employee losing pay and/or being subject to disciplinary action.

Appendix 3 - RETURN TO WORK (RTW) PROCEDURE

1. RETURN TO WORK INTERVIEWS

- 1.1 After **all** periods of absence the relevant person must carry out a Return to Work interview. This must be done within two days of the employees return to work.
- 1.2 A Return to Work interview is an opportunity to discuss the reasons relating to an absence with an individual employee, update them on work issues and express any concerns regarding their absence.
- 1.3 Return to Work interviews will be:
 - Held within two days of the return to work
 - Held on a one-to-one basis;
 - Conducted in private;
 - Treated as confidential by both parties.
- 1.4 The Headteacher or nominated person must cover the following points in their Return to Work discussion with employees, depending on the circumstances of each case:-
 - Demonstrate an interest in the employee's welfare;
 - Check that the employee has followed the procedure for reporting sickness and that all medical certification has been completed and received as per guidelines. Establish explanation/mitigation if appropriate. If procedures have not been followed the Headteacher/nominated person should explain to the individual what action if any, is being taken in relation to non-compliance e.g. stoppage of pay, disciplinary action.
 - Reaffirm the cause of absence. Confirm with the employee the reason for their absence and help identify underlying causes and possible ways of avoiding recurrence - is sickness masking another problem? Use open ended questions to draw out any issues or underlying factors, e.g. 'what were your symptoms?', 'what medical assistance have you had?', 'is there any further treatment required?'
 - Confirm that the employee has sufficiently recovered to return to work fully – if the employee is only partly fit to return to work, seek urgent advice from HR&People regarding the need for risk assessments.
 - See whether a pattern of absence is emerging – if so, this should be raised with the employee.

- Ask whether there is anything the school can do to support the employee and whether there is anything the employee can do to support themselves.
- Decide whether any further action is required, e.g. referral to Occupational Health provider, AMR, disciplinary action.
- Explain the consequences of unacceptable levels of absence.
- Update the employee on work related issues arising in their absence.
- Emphasise the importance of good attendance and the effects absence has on school/colleagues/education of pupils.

2. COMPLETING THE RETURN TO WORK FORM

- 2.1 It is a requirement that the Return to Work form is completed fully and correctly.
- 2.2 Every time there is a meeting concerning an employee's absence it should be recorded. This may be a one-off incident or it may be the beginning of a problem. If there is not a record of a meeting or Return to Work interview it may create unnecessary difficulties when presenting evidence in any future proceedings.
- 2.3 In cases that lead to action under the Attendance Monitoring Procedure, if the Return to Work form is inadequate or action stated has not been undertaken, this could seriously weaken the case and harm employment relations between the individual and the school.
- 2.4 The employee must sign the Return to Work form and be given a copy.
- 2.5 It is essential that all parties follow up any recommendations for further action as agreed.
- 2.6 Schools should consider the absence in relation to more serious problems and the occupation of the employee. In particular, short term absences i.e. stomach complaints may indicate an ulcer, muscular skeletal injuries may have longer term implications and therefore a referral to occupational health may be considered.

3. IF THE EMPLOYEE DOES NOT FOLLOW PROCEDURES

- 3.1 The Headteacher or nominated person must inform the employee that they have not followed the Notifying/Reporting Procedure and warn them that any further breaches could result in loss of pay and/or disciplinary action.

- 3.2 Headteacher or nominated person must ensure that the employee is given a copy of the procedure and that this is recorded on the form.
- 3.3 Where any doubts exist with regard to the reasons for absence, or if further issues arise from the Return to Work interview which require investigation this should be highlighted to the employee. If necessary, a separate interview should be convened as part of the Disciplinary Procedure.

Appendix 4 - Return to work interview form

(incorporating self-certification form for the first 7 days of sickness)

Surname

Forenames

Address

Job title

Payroll/

Personnel

Number

School

DETAILS OF SICKNESS ABSENCE

First day & date

Finish time last

Of absence

Day before absence

Last day &

Start time on

Date of absence

Return to work

Number of working

Days absent

Is this absence

YES/NO

Industrial injury

YES/NO

Disability related

NATURE OF SICKNESS

NAME AND ADDRESS OF GENERAL PRACTITIONER

DECLARATION

I have/have not* claimed national insurance sickness/industrial injury benefit* for this absence (*delete as appropriate)

If my absence was longer than 7 days (including weekends) I attach/have submitted a medical certificate(s) covering all absence after the 7th day

I have not undertaken any work (paid or unpaid) during my absence.

I DECLARE THAT THE DETAILS AND STATEMENTS WHICH I HAVE PROVIDED ARE CORRECT AND TRUE AND I CLAIM BENEFIT UNDER THE RELEVANT SICKNESS SCHEME FOR THE PERIOD OF SICKNESS INDICATED

SIGNED:

DATE:

Appendix 5 - Return to work interview form

To be completed by relevant manager and employee

1. Employee confirms able to return to work

YES/NO

2. Employee has followed reporting procedures

YES/NO

3. Employee updated on work issues (including problems caused through absence)

YES/NO

4. Working days absent through sickness in the last 12 months?

5. Is there concern about the level of sickness absence?

YES/NO

6. Employee has been informed about the importance of regular attendance and the fact that a poor attendance record can lead to action being taken in accordance with the school's Attendance Management policy?

YES/NO

7a. Are there any underlying reasons for the level of absence?

YES/NO

7b. Reason

8. Is there a need to review the overall absence record?

YES/NO

9a. Is there a need for any follow-up action in relation to the employees absence record?

YES/NO

9b. Follow up action to be taken, e.g. AMR.

If appropriate has a discussion taken place regarding triggers and if so what has been the outcome?

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10. EMPLOYEE COMMENTS

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SIGNED – HEADTEACHER/NOMINATED PERSON

DATE

SIGNED - EMPLOYEE

DATE