

BEBINGTON HIGH SPORTS COLLEGE



Sickness Absence Capability Policy

Agreed/Reviewed by Governors – see reverse

SECTION 15
SICKNESS ABSENCE PROCEDURE
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15.1 **Introduction**

This policy is in line with Section 15 of the Wirral Local Authority Guidelines on Staffing Procedures for Community, Voluntary Controlled and Community Special and Early Years Centres

This procedure highlights some of the main causes of absence and provides practical information and BHSC policy on managing sickness absence effectively.

The Governing Body wants to work with all staff to promote the health and well-being of its employees by creating a happy and safe environment to enable everyone to perform to the best of their abilities.

15.2 **The Legal Position**

The Employment Act 2002 and the Employment Act (Dispute Resolution) Regulations 2004 provide the main legal tools for facilitating absence management. This procedure has also taken account of the guidelines produced by ACAS.

Other pieces of legislation which have an impact on absence management are:-

Disability Discrimination Act 1995
Employment Rights Act 1996 as amended
Employment Rights Dispute Resolution Act 1998
Employment Relations Act 1999

Disability Discrimination

The management of employees who become disabled as a result of sickness may mean the Governing Body has to make 'reasonable adjustments' as directed by the Disability Discrimination Act 1995 (DDA) before they can return to school (see Section 4 of the School Staffing Guidelines).

Data Protection

The Governing Body will be careful not to breach the Data Protection Act 1998 (DPA) when they collect, use and store information about their employees' absence. Details of an employee's health, either physical or mental, are categorized as 'sensitive personal data' under the DPA. The DPA also requires openness. Employees will know what information about their health is being collected and why.

15.3 **The Purpose of the Sickness Absence Procedure**

- To meet statutory obligations and the school's aim of ensuring fair and effective management of sickness.
- To enable expected standards of attendance to be specified and monitored fairly and effectively.
- To establish arrangements for dealing with sickness absence which comply with statutory requirements and good practice.

- To ensure all arrangements for managing sickness absence are conducted fairly and consistently without bias in relation to age, disability, ethnicity, sex, religion or belief, or sexual orientation.
- To ensure that employees' sickness records are regularly reviewed and action taken to reduce absence where practicable.
- To ensure that employees are clear about the standards of attendance required of them, the time scales over which these are to be achieved and the management for monitoring and review.
- To ensure the school encourages and promotes appropriate support and assistance to employees who need to improve their attendance.
- To ensure appropriate HR and Occupational Health advice is obtained.

15.4 **Scope of the Procedure**

The procedure will apply to all employees employed at BHSC.

15.5 **Different Types of Absence**

Dealing with Problem Cases

Generally there are two distinct types of sickness absence which cause concern:

- Frequent and persistent short-term sickness
- Long-term certificated sickness

(i) Frequent and Persistent Short-term Sickness

Short-term absences can normally be defined as those of seven calendar days or less which are self-certificated by the individual, i.e. not supported by a qualified medical practitioner.

Frequent and persistent absence occurs where a pattern of absence has been established, or sometimes the reasons for absence are unrelated.

(ii) Long-term Certificated Absences

Long-term absence can be defined as medically certificated absences over seven calendar days, and normally lasting twenty calendar days or more.

When employees are absent from school due to long-term sickness they will receive sympathy and support. The Headteacher (or his nominee) will take an interest in their welfare and keep them informed about any developments in school so that they do not feel isolated and forgotten. It is the Headteacher's responsibility to keep abreast of any developments and to take appropriate action.

Should a particular case become complex in any way, and the skills of specialist agencies such as Occupational Health are required, the Headteacher will refer such cases to the schools HR consultant for assistance and will keep the LA's HR team fully informed.

(iii) Alcohol, Drug or Substance Abuse

Alcohol, drug or substance abuse are primarily health problems. The Headteacher will respond to employees suffering from alcohol/drug/substance abuse problems in a confidential, sympathetic and constructive way. Advice will be sought through the schools HR consultant and the LA's HR team will be informed and the engagement of specialist support and counselling will be made available.

(iv) Industrial Injury

A person who is injured in the course of his/her work may claim industrial injury compensation.

All accidents/injuries to employees in schools should be recorded and reported as per BHSC's Safety procedure.

15.6 Phased Returns

In certain cases, normally following a long term certified absence or injury, an employee's own GP or the LA's Occupational Health Physician may indicate that a phased return to school would facilitate an employee's recovery. The phased return, by mutual agreement, could take a variety of forms including:

- working initially on certain days of the week
- working a reduced number of hours
- undertaking restricted duties for a specified period of time

Both BHSC and the LA will facilitate and encourage this good practice in appropriate circumstances in order to provide the following advantages:

- assisting the recovery of an employee
- minimising the strain on an employee following a serious illness or injury
- encouraging a return to school

A phased return would normally last for up to four weeks with each week seeing the employee increasing their attendance and duties at BHSC until the end of the fourth week when they would be expected to be carrying out, by agreement with the school's senior management, their full duties and responsibilities.

In order to participate in a phased return the employee must be signed "fit to work" by their own GP.

The employee will be paid their full salary for the period of the phased return.

All arrangements for phased returns will be agreed in writing, to avoid any misunderstanding.

15.7 **Responsibilities of the Headteacher**

- To ensure levels of attendance are monitored and individual sickness is monitored and confidential records of sickness are kept and the employee concerned has reasonable access to them.
- To identify any problems and assist in meeting targets for levels of attendance.
- Ensure 'return to school' interviews are conducted as appropriate.
- To discuss sickness absences with employees and to set standards (under the informal stage) prior to considering further action.
- To seek advice from the LA Occupational Health provider.
- To consider reasonable adjustments in the case of an employee with a disability.
- To take into account any mitigating circumstances, e.g. personal problems.
- To ensure all employees are aware of trigger points for the investigation of sickness absence (see para. 15.10 of this document).
- To treat all employees with sympathy, compassion and understanding.
- To consider whether it is possible to change the duties of an employee due to health reasons.

15.8 **Responsibilities of the Employee**

- To attend "return to school" interviews where requested.
- To follow the procedure outlined in this policy document with regard to notification of absences and producing sick notes.
- To attend a medical examination with Occupational Health if required.

15.9 **Responsibilities of the Governing Body**

- To regularly consider school sickness absence statistics at Governing Body meetings, maintaining confidentiality.
- To be responsible in respect of the Headteacher's sickness absence. The Chair of Governors should inform the Director of Children's Services of Headteacher absences of ten days or more. The Chair of Governors will be advised by the Director of Children's Services (or his nominated officer) as to the appropriate course of action.
- Where appropriate, to attend Capability or Staff Dismissals Committee meetings to consider sickness absence cases.

15.10 **Levels of Medical Capability** **Absence Capability**

- Any period of unauthorised absence **OR**
- 3 periods of absence up to 3 days within a 6 month period **OR**
- 2 periods of absence over 4 days within a 6 month period **OR**

- 2 periods of absence over 7 days within a 12 month period **OR**
- Unacceptable patterns of absence (e.g. taking Mondays off)

Serious Incapability

This would be due to a medical condition which has been confirmed by Occupational Health. The employee might ultimately recover over time but there is no likelihood of a return to work within a reasonable period of time.

Ill Health Retirement

Where an employee is permanently incapable of carrying out their duties they may be entitled to ill-health retirement via their Pension Scheme. Advice will be sought from BHSC HR consultant and CYPD HR Officers / Occupational Health.

15.11 **Informal Action**

When the Headteacher considers that action should be taken regarding an employee's sickness absence (but before the 'triggers' are met) he will have an informal discussion with the individual in order to discuss any issues or concerns which may be affecting their ability to attend school.

The Headteacher will:-

- Point out the impact of the individual's absence on their work and their colleagues and encourage improvement.
- Explore any work, disability, welfare or domestic problems underlying the absence.
- Explore different working patterns (if appropriate).
- Arrange a review meeting after an agreed period of time.
- Ensure the employee clearly understands what improvement is required, how their performance will be reviewed and over what time period.
- Advise the employee that if their attendance does not sufficiently improve, or if any improvement is not maintained, they would move to the formal procedure and ultimately they could be dismissed on grounds of poor attendance.

15.12 **Formal Procedure**

Stage 1

If, **after** the review meeting referred to in Informal Action, the employee's attendance continues to cause concern and/or the 'triggers' referred to in 15.7 have been met, the employee will be required to attend a formal hearing with the Headteacher to discuss the matter.

The employee will be notified in writing and (unless varied by mutual agreement) given a minimum of normally **five days notice** that the hearing will be held under the terms of the school's Sickness Absence Procedure.

The letter will include full details of the employee's sickness absence record. The employee will be informed that they are entitled to be represented by a teacher

professional association/trade union representative or a friend if they so wish (see sample letter – Appendix A).

Outcome

The decision of the Headteacher will be one of the following:-

- To confirm with the employee the matter is being dismissed (or cannot be substantiated) and direct that all reference to the matter be removed from his/her record.
- To find that the alleged breach of the Sickness Absence Capability procedure is proved in whole or part but resolve that no action be taken.
- To impose a recorded oral warning advising that any further absences or breaches of the absence triggers may ultimately lead to dismissal.

Stage 2

If, following the issue of the oral warning, any of the absence triggers are met or attendance continues to cause concerns, a further formal hearing will be arranged by the Headteacher.

The employee will be notified in writing as detailed in Stage 1.

Outcome

The decision of the Headteacher will be one of the following:-

- To confirm with the employee the matter is being dismissed (or cannot be substantiated) and direct that all reference to the matter be removed from his/her record.
- To find that the alleged breach of the Sickness Absence Capability procedure is proved in whole or part but resolve that no action be taken.
- Issue of a written warning advising that any further absences or breaches of the absence triggers may ultimately lead to dismissal.

Stage 3

If, following the issue of the written warning, any of the absence triggers are met or attendance continues to cause concern, a further formal hearing will be arranged by the Headteacher.

The employee must be notified in writing as detailed in Stage 1.

Outcome

The decision of the Headteacher will be one of the following:-

- To confirm with the employee the matter is being dismissed (or cannot be substantiated) and direct that all reference to the matter be removed from his/her record.
- To find that the alleged breach of the Sickness Absence Capability procedure is proved in whole or part but resolve that no action be taken.

- Issue of a final warning advising that any further absences or breaches of the absence triggers may ultimately lead to dismissal.

Stage 4

If, following the issue of the final warning, any of the absence triggers are met or attendance continues to cause concern, a further formal hearing will be arranged. This meeting will be conducted by the school's Staff Dismissal Committee.

Hearing conducted by the Staff Dismissal Committee

The Staff Dismissal Committee will consist of up to 3 but not less than 2 members of the Governing Body (excluding the Headteacher) who have not previously been involved in the case, or have any other involvement, e.g. relationship to the employee subject to sickness absence action.

The Governing Body will ensure that at the first meeting of the School Governors, both a Staff Dismissal Committee and a Staff Dismissal Appeal Committee is properly constituted and have appropriate powers delegated to them.

Initial Action

- The employee will be notified by the Headteacher in writing and (unless varied by mutual agreement) giving a minimum of normally **ten days** notice that the hearing is to be held under the terms of the school's Sickness Absence Procedure.
- An employee is entitled to be represented by a teacher professional association/trade union representative or a friend and this entitlement will be included in the above letter.
- In the case of a sickness absence hearing being conducted with an employee who is an accredited official of a recognised teacher professional association or trade union, consultation will take place prior to the above letter being sent with a senior official of their teacher professional association or trade union.
- The above letter will include full details of the employee's sickness absence records.
- A copy of the above letter will be forwarded by the Headteacher to the Clerk of the Governing Body and to the Director of Children's Services or his nominated officer well in advance of the hearing.
- **Documentation from both parties will be given to the Staff Dismissal Committee 3 working days prior to the hearing in order for the Committee to be better informed about the issues of the case.**
- The Director of Children's Services, or his nominated HR officer and in specific circumstances, the Authority's Head of Legal Services or his

nominated representative, will be invited to attend the disciplinary hearing for the purpose of giving advice. The Committee must consider any advice given before reaching a decision.

During the Hearing

- The Headteacher to put the case and call witnesses if appropriate.
- The employee (or his/her representative) to ask questions of the Headteacher and witnesses.
- The members of the Staff Dismissal Committee to ask questions of the Headteacher and witnesses.
- The employee (or his/her representative) to put his/her case and to call witnesses if appropriate.
- The Headteacher to ask questions of the employee and/or his/her representative and witnesses.
- The members of the Staff Dismissal Committee to ask questions of the employee and/or his/her representative and witnesses.
- The Headteacher to sum up.
- The employee (or his/her representative) to sum up.
- The Chairperson of the Staff Dismissal Committee may adjourn the proceedings at any stage if it appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she should specify the nature of that information. Any adjournment will normally be for a stated period.
- Following the summing up, both parties, together with their representatives will withdraw. If it is necessary to recall one of the parties for further information before a decision is taken both parties will be recalled. The Director of Children's Services or his nominated officer, will remain during the Staff Dismissal Committee's deliberations.
- On completion of the Staff Dismissal Committee's deliberations the Chairperson will ask the employee and his/her representative to return and will announce the decision of the Staff Dismissal Committee and the action, if any, to be taken.

Outcome

The decision of the Staff Dismissal Committee will be one of the following:

- To confirm with the employee the matter is being dismissed (or cannot be substantiated) and direct that all reference to the matter be removed from his/her record.
- To find that the alleged breach of the Sickness Absence Capability procedure is proved in whole or part but resolve that no action be taken.
- To impose a recorded final warning advising that any further absences or breaches of the absence triggers may ultimately lead to dismissal.
- To determine that the employee will cease to work at the school.

The Chairperson will also give an explanation for that action and will explain the employee's right of appeal under the procedure.

The Staff Dismissal Committee will confirm the decision in writing as soon as is reasonably practical to the employee (copy to the teacher professional/trade union representative and the Director of Children's Services), detailing the sickness absences and the action taken.

Appeal

The Employee has the right of appeal to the Staff Dismissal Appeal Committee of the Governing Body.

The employee should send a written appeal for the attention of the Clerk to the Governors within 10 days of receiving the letter from the Chair of the Staff Dismissal Committee with a copy to the Director of Children's Services.

Where the decision of the Staff Dismissal Committee is that an employee should cease to work at the school, a copy of the written notification to the employee setting out the reasons for the decision must be sent to the Director of Children's Services.

Dismissal is now effective from the initial dismissal decision (IDD) with reinstatement should an appeal be successful.

Where an appeal is not lodged against a decision of the Staff Dismissal Committee that the employee should cease to work at the school, the LA must terminate the contract of employment within 14 days of the initial dismissal decision (IDD).

15.13 **Capability – "Long Term Sickness Absence"**

Where an employee has experienced long term sickness absence but has not sought or has been rejected for an ill health pension the Governors can deal with this within the Capability Procedure under "some other substantial reason for dismissal" in that the employee has not attended the school since a given date.

Before the Headteacher decides on this course of action he must first have received a written report from the Council's Occupational Health provider stating that the employee's likely return date to school is unknown due to their continuing sickness. The school's HR consultant and an appropriate LA HR Officer will be involved and discussions will have taken place with the employee's professional association/trade union representative.

In such cases of long term sickness absence where there is little or no likelihood of the employee returning to school within the reasonably foreseeable future, it will **not** be necessary for the Capability Committee to meet and issue a final warning.

The capability matter can be referred directly to the Staff Dismissal Committee by the Headteacher and the procedure as outlined in 15.11-Stage 4 should be followed.

15.14 **Capability and the Grievance Procedure**

Governors note that no procedure should automatically take precedence over another. Complaints from an employee under the school based Grievance Procedure should not, as a general rule, be taken as a justification for delaying the Capability Procedure. Equally the Grievance Procedure should not be delayed by the Capability Procedure.

SAMPLE LETTERS

FORMAL PROCEDURE – STAGE 1

Dear

**SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE
FORMAL STAGE 1**

Your level of sickness absence has now reached a level where it is causing concern. I, therefore, require you to attend a meeting under Stage 1 of the above procedure in my office (*amend as appropriate*) on (*date*) at (*time*),

Enclosed is a copy of your sickness absence details; a report from the Council's Occupational Health provider (*if appropriate*) and a copy of the school's Sickness Absence Capability Procedure.

The outcome of this meeting may lead to the issue of a formal warning as set out in the procedure. You are entitled to be represented by a teacher professional association/trade union representative or other person if you so choose.

It is important for you and your representative to prepare your response carefully so that I can consider all relevant information. If there is anything which you do not understand or if you have any questions regarding this matter please contact me.

Yours sincerely

Headteacher

FORMAL PROCEDURE – STAGE 1 – OUTCOME LETTER

Dear

SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE FORMAL STAGE 1

I refer to your meeting with me on *(date)* when your representative *(name)* was present (when you chose not to have a representative present) regarding your sickness absence.

At that meeting I informed you that I had concerns regarding your level of sickness absence and I informed you of the improvement I expected in the future which was *(state)* *(or amend as appropriate)*.

I am now issuing you with an *oral warning under the school's Sickness Absence Capability procedure. If your sickness absence does not improve you may ultimately be dismissed. It is hoped, however, that there will be no further action on the school's part. This warning will last for a period of six months.

Your Conditions of Service give you a right of appeal against this decision to the school's Appeals Committee. If you wish to exercise this right you may do so either individually or through your teacher professional association/trade union representative by notifying the Clerk to the Governors within 10 days from the date you receive this letter. You have a right to appear before the Appeals Committee with or without a representative of a teacher professional association/trade union representative or friend of your choice.

Yours sincerely

Headteacher

***OR** I am now confirming that the matter has been dismissed (or cannot be substantiated) and I have directed that all reference to the matter be removed from your record.

***OR** I found that the alleged breach of the Sickness Absence Capability Procedure was proved in whole or part but I have resolved that no action be taken.

FORMAL PROCEDURE – STAGE 2

Dear

SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE FORMAL STAGE 2

I refer to your meeting with me on *(date)* under Stage 1 of the above procedure. As there has not been an improvement in your attendance I now require you to attend a meeting under Stage 2 of the above procedure in my office *(amend as appropriate)* on *(date)* at *(time)*.

Enclosed is a copy of your sickness absence details; a report from the Council's Occupational Health provider *(if appropriate)* and a copy of the school's Sickness Absence Capability Procedure.

The outcome of this meeting may lead to the issue of a formal warning as set out in the procedure. You are entitled to be represented by a teacher professional association/trade union representative or other person if you so choose.

It is important for you and your representative to prepare your response carefully so that I can consider all relevant information. If there is anything which you do not understand or if you have any questions regarding this matter please contact me.

Yours sincerely

Headteacher

FORMAL PROCEDURE – STAGE 2 – OUTCOME LETTER

Dear

SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE FORMAL STAGE 2

I refer to your meeting with me on *(date)* when your representative *(name)* was present (when you chose not to have a representative present) regarding your sickness absence.

At that meeting I informed you that I had concerns regarding your level of sickness absence and I informed you of the improvement I expected in the future which was *(state) (or amend as appropriate)*.

I am now issuing you with a *written warning under the school's Sickness Absence Capability procedure. If your sickness absence does not improve you may ultimately be dismissed. It is hoped, however, that there will be no further action on the school's part. This warning will last for a period of six months.

Your Conditions of Service give you a right of appeal against this decision to the school's Appeals Committee. If you wish to exercise this right you may do so either individually or through your teacher professional association/trade union representative by notifying the Clerk to the Governors within 10 days from the date you receive this letter. You have a right to appear before the Appeals Committee with or without a representative of a teacher professional association/trade union representative or friend of your choice.

Yours sincerely

Headteacher

***OR** I am now confirming that the matter has been dismissed (or cannot be substantiated) and I have directed that all reference to the matter be removed from your record.

***OR** I found that the alleged breach of the Sickness Absence Capability Procedure was proved in whole or part but I have resolved that no action be taken.

FORMAL PROCEDURE – STAGE 3

Dear

SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE FORMAL STAGE 3

I refer to your meeting with me on *(date)* under Stage 2 of the above procedure. As there has not been an improvement in your attendance I now require you to attend a meeting under Stage 3 of the above procedure in my office *(amend as appropriate)* on *(date)* at *(time)*.

Enclosed is a copy of your sickness absence details; a report from the Council's Occupational Health provider *(if appropriate)* and a copy of the school's Sickness Absence Capability Procedure.

The outcome of this meeting may lead to the issue of a formal warning as set out in the procedure. You are entitled to be represented by a teacher professional association/trade union representative or other person if you so choose.

It is important for you and your representative to prepare your response carefully so that I can consider all relevant information. If there is anything which you do not understand or if you have any questions regarding this matter please contact me.

Yours sincerely

Headteacher

FORMAL PROCEDURE – STAGE 3 – OUTCOME LETTER

Dear

SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE FORMAL STAGE 3

I refer to your meeting with me on *(date)* when your representative *(name)* was present (when you chose not to have a representative present) regarding your sickness absence.

At that meeting I informed you that I had concerns regarding your level of sickness absence and I informed you of the improvement I expected in the future which was *(state)* *(or amend as appropriate)*.

I am now issuing you with an *final warning under the school's Sickness Absence Capability procedure. If your sickness absence does not improve you may ultimately be dismissed. It is hoped, however, that there will be no further action on the school's part. This warning will last for a period of six months.

Your Conditions of Service give you a right of appeal against this decision to the school's Appeals Committee. If you wish to exercise this right you may do so either individually or through your teacher professional association/trade union representative by notifying the Clerk to the Governors within 10 days from the date you receive this letter. You have a right to appear before the Appeals Committee with or without a representative of a teacher professional association/trade union representative or friend of your choice.

Yours sincerely

Headteacher

***OR** I am now confirming that the matter has been dismissed (or cannot be substantiated) and I have directed that all reference to the matter be removed from your record.

***OR** I found that the alleged breach of the Sickness Absence Capability Procedure was proved in whole or part but I have resolved that no action be taken.

FORMAL PROCEDURE – STAGE 4 – CONDUCTED BY THE STAFF DISMISSAL COMMITTEE

Dear

**SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE
FORMAL STAGE 4**

I refer to your previous meetings with me regarding your level of sickness absence under Stages 1, 2 and 3 of this procedure. As there has not been an improvement in your attendance I now require you to attend a meeting under Stage 4 of the above procedure with the school's Staff Dismissal Committee on *(date)* at *(time)* in *(venue)*.

Enclosed is a copy of your sickness absence details; a report from the Council's Occupational Health provider *(if appropriate)* and a copy of the school's Sickness Absence Capability Procedure.

The outcome of this meeting may lead to your dismissal from the school's employment as set out in this procedure. You are entitled to be represented by a teacher professional association/trade union representative or other person if you so choose.

It is important for you and your representative to prepare your response carefully so that I can consider all relevant information. If there is anything which you do not understand or if you have any questions regarding this matter please contact me.

Yours sincerely

Headteacher

FORMAL PROCEDURE – STAGE 4 – OUTCOME LETTER

Dear

SCHOOL'S SICKNESS ABSENCE CAPABILITY PROCEDURE FORMAL STAGE 4

I refer to your meeting with the school's Staff Dismissal Committee on *(date)* when your representative *(name)* was present (when you chose not to have a representative present) regarding your sickness absence.

At that meeting the Committee considered your level of sickness absence. Having considered all the details and circumstances of your case, the Committee concluded there had been no improvement in your level of attendance *(or amend as appropriate)*. I am, therefore, giving you formal notice that your employment with the school is terminated with immediate effect.*

Your Conditions of Service give you a right of appeal against this decision to the school's Staff Dismissal Appeals Committee. If you wish to exercise this right you may do so either individually or through your teacher professional association/trade union representative by notifying the Clerk to the Governors within 10 days from the date you receive this letter. You have a right to appear before the Staff Dismissal Appeals Committee with or without a representative of a teacher professional association/trade union representative or friend of your choice.

Yours sincerely

Headteacher

- *OR I am now confirming that the matter has been dismissed (or cannot be substantiated) and I have directed that all reference to the matter be removed from your record.
- *OR I found that the alleged breach of the Sickness Absence Capability Procedure was proved in whole or part but I have resolved that no action be taken.