



Attendance Management Policy 2022

Review: Summer 2024

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 policy is recommended for adoption by all maintained schools including community, voluntary controlled, community special, maintained nursery, foundation, foundation special and voluntary aided schools. It 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. References in this document to the Headteacher include a reference to an academy or free school Principal and references to the Governing Body include references to Governing Boards and/or Trustees as applicable. One Education’s HR and People service can assist academies in adapting this policy to reflect their academy or MAT status.

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

Document Control	
Title	Attendance Management Policy and Procedure
Date	October 2021
Supersedes	Attendance Management Policy March 2020
Amendments	Referenced and explained the definition of a “School Working Day” for School Support Staff and School Teaching Staff within the “Scope and Definitions” Section.
Related policies/guidance	Ill health retirement processes, Disciplinary and Dismissal Policy and Procedure, Capability Policy and Procedure, Wellbeing Charter, Equality Policy
Review	2 years
Author	HR and People, One Education Ltd
Date adopted by Governing Body	19.07.2022

Equality Statement: Under the public sector equality duty (PSED), 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 One Education 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 and the PSED. 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. Schools should also contact the HR and People team if they need to access this policy in a different format.

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Section 1 - MANAGING EMPLOYEE ATTENDANCE

Introduction

This policy accords with education and employment legislation including the Employment Rights Act 1996 and the Equality Act 2010. It is also consistent with the employment powers, duties and responsibilities of the Governing Body as set out in its [Articles of Government] and takes into account the obligations placed on Governing Bodies in the School Staffing (England) Regulations 2009.

This policy has been adopted by the Governing Body of [] school (“the School”) and 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 employees which need to be clearly understood to ensure that the policy works effectively and efficiently

In the application of this policy, the School will be mindful of its obligations and duties under the Equality Act 2010. Reasonable adjustments will be made where required to assist an employee and/or their companion with a disability. If there are any language issues affecting an employee and/or their companion, these will be reasonably addressed so that all meetings or hearings taking place under this policy can take place fairly.

1:1 PURPOSE OF 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 employees 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 their own well-being and attendance for the benefit of the School, 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.

1:2 SCOPE AND DEFINITIONS

This policy applies to all employees in the School whose employment is under the purview of the Governing Body including the Headteacher. It does not apply to self-employed staff, contractors, external consultants, agency staff or governors.

This policy covers the management of both short-term and long-term sickness absences.

For the avoidance of doubt, in this policy any reference to a "**school working day**" will have the following meaning: -

- (a) **School Support Staff:** -any day during an academic year when a school is normally open for educational purposes or when staff are in attendance for training purposes, and
- (i) in the case of staff contracted to work during term time only, **excluding** any day which falls on a Bank Holiday or within school holiday periods, and
 - (ii) in the case of staff contracted to work all year round, excluding any day which falls on a Bank Holiday but **including** any day which fall within school holiday periods.
- (b) **School Teaching Staff:** - any day during an academic year when a school is normally open for educational purposes or when staff are in attendance for training purposes but **excluding** any day which falls on a Bank Holiday or within school holiday periods.

1:3 PRINCIPLES

Within this Policy the Governing Body will: -

- deal with sickness absence in a way that is non-discriminatory, in accordance with the School's commitment to equal opportunities and in line with the School's duties and responsibilities under Equality Act 2010;
- ensure fair and consistent treatment of all employees who are absent from work due to sickness;
- seek advice from appropriate medical practitioners where appropriate;
- make reasonable adjustments as required under the Equality Act 2010 in relation to employees with a disability;
- conduct sickness absence cases with respect for confidentiality and in accordance with the requirements of the General Data Protection Regulations (GDPR), the Data Protection Act 2018 and the Access to Medical Records Act 1988.

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 an employee cannot sustain reasonable levels of attendance, dismissal for unsatisfactory attendance or on the grounds of incapability due to ill health will be given serious consideration.

1:4 ROLES AND RESPONSIBILITIES

Employees are required to: -

- attend work and fulfil their contractual obligations;
- comply with the School's sickness absence reporting procedure;
- take positive action to support their own health and well-being;
- inform the 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 (RTW's), Attendance Monitoring Review meetings (AMRs) and Attendance Management Hearings (AMHs);
- co-operate with all efforts to identify and implement reasonable adjustments;
- maintain regular contact with the School in addition to the submission of s appropriate;
- comply with safe working practices and procedures.

It is expected that employees 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 are responsible for monitoring, managing and controlling absence by: -

- creating a culture where people want to attend work;
- supporting employees with their health and well-being;
- monitoring management information, identifying trends and patterns and taking appropriate action;
- exploring reasons for absence;
- maintaining regular contact with employees;
- conducting meaningful RTW interviews (see Appendices 3 & 4) and AMRs without delay;
- arranging AMHs 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;
- providing attendance statistics to the Governing Body each term.

The responsibilities of the Governing Body are to: -

- establish a relevant Committee structure with responsibility for attendance management of employees 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 employee attendance statistics each term;
- monitor and review employee wellbeing including that of the Headteacher;
- manage any attendance or wellbeing issue related to the Headteacher;
- ensure appropriate budget provision for supply staff and staff well-being;
- 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);
- 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.

1:5 CONDUCT ISSUES

Failure by an employee to comply with the provisions of this policy, 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 reasonably believed this policy has been breached a disciplinary investigation will be undertaken in line with the School's Disciplinary Policy and Procedure which may result in disciplinary action being taken against the employee and may lead to a disciplinary sanction (up to and including dismissal).

Failure to comply with the provisions of this policy may also lead to loss or suspension of an employee's pay.

1:6 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 School's statutory obligations under the GDPR and the Data Protection Act 2018.

1:7 ANNUAL LEAVE AND SICK

Employees will continue to accrue annual leave during periods of sickness absence. Where long term sickness absence prevents an employee from taking their annual leave during a leave year, they may carry forward up to the maximum of their statutory entitlement of four weeks leave (pro-rated for part time employees), less any leave already taken in the year. For employees working term time only, any accrued entitlement is included in normal school closure periods.

Section 2 - ATTENDANCE MANAGEMENT PROCEDURE

2:1 NOTIFYING ABSENCE AND RETURN TO WORK

In order to ensure the effective running of the School and to ensure the delivery of teaching and learning to pupils is maintained, employees must inform the Headteacher or School's nominated person of their inability to attend work and the reason for this on the first day of absence. This will normally be no later than one hour before they are due to either commence work or at an agreed time notified locally by the school.

Employees must report their 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 Headteacher or nominated person is not available then the employee must contact a member of the Senior Leadership Team (SLT) and leave a contact number.

If for any reason none of the above persons are available when the employee calls, the employee should expect a telephone call from the Headteacher, nominated person or member of the SLT at home later in the day to establish a reason for the absence.

If an employee fails to comply with the notification procedure in this policy their absence will be treated as unauthorised and the School reserves the right to withhold occupational sick pay and statutory sick pay. The employee's failure to comply will also be regarded as a breach of this policy and the School may consider initiating action under the School's Disciplinary Policy and Procedure.

Employee notification expectations

Day of absence	Action by employee	Action by manager	Sickness absence evidence	When required
Day 1	Personal contact to the Headteacher or nominated person by telephone, no later than 1 hour before the start of their normal working day/shift. The employee must provide details of the reason for absence and give an indication of the anticipated duration of the illness/incapacity.	Record of conversation(s)		On first day of absence
Calendar days 2 – 7	Daily contact with the Headteacher or nominated person to notify of the reason for the continued absence and inform of their recovery process	Record of conversation(s)	Self-certification day 4-7	Days 2-7
Calendar day 8	Contact Headteacher or nominated person to notify of the reason for continued absence. Obtain a Fit Note from GP.	Record of conversation	Fitness for work certificate from GP	Within 2 days of issue
Subsequent continuous absence	Contact Headteacher or nominated person to notify of the reason for continued absence. Obtain a Fit Note from GP.	Record of conversation	Fitness for work certificate from GP	Within 2 days of issue

Return to work	Contact Line Manager/ supervisor as soon as possible and no later than 24 hours before intended date of return.	Hold return to work interview with employee. Determine if absence is related to a disability or not.	Fitness to return to work note if appropriate /requested	Within 2 days of return
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2:2 RETURNING TO WORK

When an employee returns to work following a period of sickness absence or unauthorised leave, they will be required to attend a Return to Work Interview (RTW) with their Line Manager, regardless of the duration of the absence. The RTW interview should take place within two days of returning to work, and must be attended by both the employee and manager.

The RTW form will be retained by the Line Manager. Each time an employee returns to work, the manager should speak to the employee about the absence and the reason for it. The manager should assess whether the employee is fit for work before commencing work. Ahead of the meeting it is useful to obtain a copy of the employee's absence record over the last 12 months to review general attendance and to check if employee has hit triggers. The manager should also ensure confidential records of all absences are kept.

The purpose of the RTW Interview is to:

- assess whether the employee is fit to work;
- establish if there are any underlying reasons for the absence;
- demonstrate an interest in the employee's well-being;
- identify possible patterns or trends of absence and investigate these;
- establish whether the employee's absences are in any way work related;
- establish whether medical advice needs to be sought to determine whether there is any underlying medical explanation for the employee's absence;
- establish whether any reasonable adjustments need to be made to assist in the employees return to work;
- set reasonable targets / timelines for improvement if necessary;
- warn the employee of the consequences of continuing unsatisfactory attendance;
- if triggers have been met, to inform the employee that they will be invited to an AMR meeting.

If returning after a long period of absence it is good practice to set informal review meetings over the following 1-2 terms as a minimum and consider developing a Wellbeing Recovery Action Plan (if there is a mental health concern) Please contact One Education's HR and People Team for details.

A return to work interview template is attached at Appendix 3.

2:3 TRIGGERS FOR ACTION

Triggers

The purpose of trigger points is to alert the 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 the 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 (pro-rated for part-time staff): -

- for 4 or more consecutive days in a term;
- on 3 or more occasions in a term;
- there are recognisable patterns of absence e.g. on Fridays and/or Mondays, before or after Bank Holidays/school closure periods;
- there has been an increase in absence following expiry of a previous Improvement Notice or an Attendance Monitoring Warning;
- there has been a single absence lasting more than 10 consecutive school working days;
- an employee is absent from work due to a mental health condition for any duration.

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

When a trigger point is reached the Headteacher or Nominated Person should meet with the employee at an AMR meeting to ascertain the reasons for the employee reaching the trigger and whether support to maintain their attendance is appropriate.

Employees are entitled to be accompanied at AMRs by a Trade Union representative or work colleague. Employees should be given 5 working days' notice of any AMR meeting

2:4 MANAGING SHORT TERM ABSENCE

N.B. When managing short term absences, informal meetings or discussions with employees may be held at any stage outside of the formal AMR process if this is considered appropriate in the circumstances. It is important that in such cases, details of the meeting and outcomes/actions are documented.

Stage One - first Attendance Monitoring Review Meeting (AMR)

If trigger points are reached 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;
- seek to establish whether the employee is disabled within the meaning of the Equality Act 2010 and whether the reason for the employee's absence(s) is connected to or for a reason arising in consequence of the employee's disability.

Possible outcomes of first AMR: -

- appropriate review/monitoring period established;
- identification of improvement needed and relevant timescales;
- Attendance Monitoring Warning (AMW) issued (if appropriate);
- some other appropriate action (e.g. support for employee, flexible working options discussed etc);
- no further action to be taken (*only in exceptional cases should no action be taken.*)

A letter will be sent to the employee normally within 10 school working days of the meeting. The letter will confirm the outcome of the meeting including any action points and any support or adjustments agreed. It is important to implement any identified actions as soon as possible. If a decision is taken to issue an AMW, the following points should be included in the warning to the employee:

- why their attendance does not meet the required standards and is causing concern;
- why their absence is having a detrimental impact on the running of the School;
- that an immediate improvement in their attendance is required and details of the review/monitoring period for which the improvement must be sustained;
- appropriate revised trigger points and confirmation that the employee's attendance will be monitored against the revised triggers;
- the fact that if further absences occur during the review/monitoring period which meet the revised triggers the employee will be invited to a second AMR meeting;
- that the employee must sustain their attendance in accordance with targets set in the AMW for a minimum of 12 months and failure to do so will mean the procedure will recommence at the stage it had reached at the time the AMW was issued;
- the length of time the AMW will remain on their record;
- that if the employee's attendance improves to the required standard during the above review/monitoring period, the employee will be removed from the attendance monitoring procedure;
- the employee's right of appeal against the decision to issue an AMW.

Stage Two - second AMR

A second AMR will be held if: -

- the revised triggers are hit; or
- there has been insufficient improvement in the employee's attendance during the further monitoring /review period established at the first 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 first AMR meeting;
- review the employee's 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 any previous support/reasonable adjustments provided.

Possible Outcomes of second AMR: -

- final AMW issued (see points above) with a caution that if the improvement identified in the warning is not achieved and sustained then an Attendance Management Hearing (AMH) may be held;
- identification of improvement required and relevant timescales;
- further revised/modified triggers set;
- further review/monitoring period established;
- referral to the School's Occupational Health provider in order to re-assess medical position and any further support which can be provided.

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

Should a final AMW be issued the employee must be advised of their right of appeal.

Stage Three - Attendance Management Hearing (AMH)

If, following the issue of a final AMW, the employee has not achieved and/or sustained the improvement required within the further review/monitoring period, an AMH may be held. This could result in a decision to dismiss the employee on notice. The Employee must be advised of the reasons for the AMH and that dismissal on notice may result due to their incapability due to ill health and/or the impact of their continuing absences on the School. Further information in relation to the process around the holding of an AMH and related considerations (early release of LGPS pension benefits/access to benefits under the Teachers' Pension Scheme) is detailed in section 2.5 below.

Equality Act considerations when managing short term disability related absences

If an employee's short-term absences are for reasons connected to their disability, the School must be mindful of its obligations under the Equality Act 2010. The School must make reasonable adjustments to the attendance management process which may include the following: -

- agreement to a higher level of sickness absence and an adjustment to the trigger points in this procedure;
- agreement to discount certain periods of disability related absence;
- granting a period of disability leave;
- a decision not to issue an AMW;
- an extension to the process to include a third AMR prior to holding an AMH;
- a decision that it is appropriate to deal with the employee's absence in accordance with the provisions relevant to managing long term absences.

During any AMR meetings with the employee, the School should: -

- identify which of the employee's absences are connected to their disability and which are not;
- review the employee's current health situation and any available medical information, including details of what medical intervention has occurred already, what is planned, by whom and expected timelines;
- discuss referral to the School's Occupational Health provider;
- establish what positive action the employee has taken to maintain their health and to improve their attendance;
- review any reasonable adjustments already put in place discussing the impact these adjustments have had and the extent to which these have improved the employee's attendance;
- discuss whether the employee's attendance levels are likely to improve in the future and whether current levels are sustainable;
- warn of possible consequences if despite all the support and adjustments provided, there has not been an acceptable improvement in the employee's attendance.

Further guidance on the School's duties in cases where there are Equality Act 2010 considerations (including examples of further reasonable adjustments) is contained in **Appendix 1**.

2.5 MANAGING LONG TERM ABSENCE

Absences of more than 10 consecutive school 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 the 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 the 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 an AMR meeting will be held with the employee after the first 4 weeks' of absence, and then every 4 weeks in order to discuss the employee's absence. During the AMR meeting the school will;

- explore the reasons for the employee's absence/identify progress and/or any appropriate support;
- seek to identify any underlying cause/whether the employee is disabled within the meaning of the Equality Act 2010 and whether their absence is because of or connected to their disability;
- ask about treatment and/or specialist help being received;
- seek to establish the action the employee has already undertaken or will undertake to aid their recovery and to expedite their return to work;
- establish whether a date for return to work can be given;
- confirm a date for the next review meeting;
- consider seeking an opinion from the School's Occupational Health Adviser, explaining the purpose of the referral to the employee;
- explain the consequences of continuing absences;
- bearing in mind any disability issues and/or medical advice received, consider: -
 - reasonable adjustments;
 - other support mechanisms;
 - redeployment within the School on medical grounds;
 - whether an application should be made for early release of pension benefits under the LGPS or in the case of a teacher, whether they should be advised to make an application under the Teachers' Pension Scheme;
 - a structured/phased return to work.

Where an employee cannot or does not attend an AMR at the 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 AMRs will be confirmed in writing to the employee within 10 school working days of the meetings.

12-week review meeting

A formal review following 12 weeks of continued absence from the School should be arranged. The Headteacher or Line Manager will write to the employee inviting them to attend a formal review meeting giving at least 5 school working days' notice and providing any relevant documentation that may be referred to at the meeting. The employee can be accompanied at this meeting by a companion who may be a trade union representative or a work colleague. Up to date medical advice may be obtained from the School's Occupational Health provider for this meeting.

At the meeting the Headteacher or Line Manager will explore with the employee:

- medical opinion, the prognosis about recovery including the expected timescale for a return to work;
- what support the employee needs to enable him/her to make a successful return to work;
- whether the employee is disabled within the meaning of the Equality Act 2010 and whether any reasonable adjustments can be made to support their return;
- the impact of the absence on the school's operations including the School's ability to cover the employee's role, the impact on staff and pupils and the costs associated with the employee's continuing absence.

Possible outcomes following 12-week review

- taking no further action;
- discounting certain periods of disability related absence;
- agreeing a return to work plan including reasonable adjustments e.g. a phased return;
- extending the period of monitoring and review;
- obtaining further medical advice including specialist opinion;
- referral to an AMH (ensuring the employee is fully advised of the reasons for the referral and the risk of dismissal where a return to work is unlikely within a reasonable timescale).

If the period of monitoring is extended the case should then be reviewed every 4 weeks and the employee should be invited to 16-20-24-week attendance management review meetings with possible outcomes outlined as described above.

Equality Act considerations when managing long term disability related absences

If an employee's long-term absences are for reasons connected to their disability, the School must be mindful of its obligations to the employee under the Equality Act 2010. In addition to the points already outlined above further guidance is provided in **Appendix 1** of this policy. The School is advised to seek advice from One Education's HR and People service when managing long term disability related absence cases.

Consideration of early release of LGPS benefits due to ill health (support staff)

When all reasonable alternatives have been explored and the dismissal of an employee on the grounds of incapability due to ill health is a real consideration, the School is obliged to make a decision as to whether the employee is entitled to access their pension benefits early.

The early release of LGPS benefits due to the employee's ill health is subject to strict criteria and due process must be followed. The School **must** contact its LGPS pensions team at the earliest opportunity for support and guidance with this process.

Ill health retirement (teachers)

Where the dismissal of a teacher on the grounds of incapacity due to ill health is being considered, the provisions of the Teachers' Pension Scheme regarding ill health retirements should be noted and followed where appropriate. **Note - Dismissal on the grounds of incapacity does not guarantee an award of ill health retirement benefits.** Advice on the process to be followed should be taken from One Education's HR and People service.

Attendance Management Hearing (AMH)

The employee and their companion (who will be a Trade Union representative or work colleague) will, no later than 10 school working days before the AMH be informed in writing of the date, time and venue of the hearing. The notification will set out the detailed reasons for the hearing and will caution the employee that the hearing could result in a decision to dismiss them on the grounds of their incapability to perform their role due to their ill health.

No later than 5 school working days before the hearing copies of any documentation the School intends to rely upon at the hearing will be forwarded to the employee. The employee also will send copies of any documentation they intend to rely upon to the School no later than 5 school working days before the hearing.

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 their companion, 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 employee's absences on the School;
- any representations from the employee;
- whether there are Equality Act 2010 considerations;
- the management of the case;
- the medical advice received;
- whether medical advice is relevant and up to date;
- the support/reasonable adjustments considered and/or provided;
- whether any adjustments or auxiliary aids provided have been effective;
- any further action that can reasonably be taken;
- options for redeployment within the School on medical grounds;
- whether an application for early release of pension benefits has been made (LGPS or TPS as appropriate).

Possible Outcomes of an AMH

- further medical evidence to be sought;
- further reasonable adjustments to be implemented;
- consideration of alternative employment;
- further AMW issued with further review/monitoring period established;
- when all other alternatives have been considered, dismissal with notice in accordance with the employee's contractual notice entitlement. (Note - in community, voluntary controlled, community special and maintained nursery schools the Local Authority must be notified of the Headteacher's/Governing Body's determination to dismiss the employee and the reasons for their determination and the Local Authority must write to the employee to notify them of the termination of their employment).

The School will write to the employee normally within 10 school working days of the AMH, confirming the outcome of the hearing and any actions identified and, if a further AMW or dismissal is the outcome, informing the employee of the reasons for the decision and their right to appeal (see section 2.6 below).

2.6 RIGHT OF APPEAL

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

An employee issued with notice of dismissal has the right to appeal to a Committee of three Governors (dependent upon the procedures adopted by the Governing Body).

There is no further right of appeal after this stage has been completed.

Where an employee wishes to appeal a decision made in relation to the early release of pension benefits under LGPS, they can appeal within six months of the date of the decision letter. The School will refer to the Local Authority LGPS pensions' team and One Education's HR and People service for advice in this regard.

In order for any appeal to be considered the employee must submit in writing the grounds upon which they base their appeal within 10 school working days of being advised in writing of the decision they are appealing. The grounds of appeal must be sufficient to justify the arranging of the appeal.

Note - At the appeal hearing the employee and/or their representative will present their case first based on the grounds submitted with any new evidence. The school will then respond to the appeal.

2.7 SANCTIONS/WARNINGS

An AMW issued under this policy will remain live for 12 calendar months from the date of issue and will 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.

2.8 RIGHT TO BE ACCOMPANIED

Employees may be accompanied at all normal AMRs and AMHs by a companion who will be either a work colleague, a person employed by a Trade Union or a Trade Union representative who has been certified in writing by the union as having experience of acting as a companion.

If the companion cannot attend on a proposed date for a meeting, an alternative companion should be nominated or the meeting re-arranged to a time and date which is **no more** than 5 working days after the date originally proposed.

Employees must make their own arrangements if they wish to be accompanied at AMRs or AMHs 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.

2.9 REDEPLOYMENT

In cases where the School's 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 in community schools.

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

2.10 DISMISSAL

When it has been decided that an employee's case should be referred for an AMH and all appropriate options have been explored, including reasonable adjustments under the Equality Act 2010, the dismissal of the employee may need to be considered. When deciding whether dismissal is reasonable and appropriate, the School will take into account obligations under employment law including the Employment Rights Act 1996 and the Equality Act 2010 and also the provisions of the Education (Health Standards) (England) Regulations 2009.

Where a decision to dismiss is made, the School must ensure the dismissal is effected by the person(s) who has/have the appropriate authority to dismiss with the appropriate contractual notice. In community, voluntary controlled, community special and maintained nursery schools the Local Authority must be notified in writing of any determination to dismiss and the reasons for the determination. The Local Authority must then write to the employee to notify them of the termination of their employment and to confirm the date of termination.

Section 3 – APPENDICES

Appendix 1

GUIDE TO DISABILITY DISCRIMINATION PROVISIONS UNDER EQUALITY ACT

The Equality Act 2010 (the Act) protects individuals with protected characteristics from discrimination. Disability is a protected characteristic under the Act. Discrimination may take various forms and includes direct discrimination, indirect discrimination, harassment and victimisation and in the case of people with a disability, also includes discrimination arising from a disability and a failure to make reasonable adjustments.

This means that in the application of this policy, both in respect of short term and long-term absences, schools must not treat an employee with a disability less favourably than they treat or would treat someone else without a disability. It also means that if the application of this policy is more likely to have an adverse effect on employees with a disability compared to employees who do not have a disability, schools must ensure they can objectively justify their actions and responses by showing that they are appropriate and necessary, for legitimate reasons and they are a proportionate means of achieving a legitimate aim.

Provisions under S15 of the Act which relate specifically to people with a disability, also mean an employee with a disability must not be treated *unfavourably* because of something *connected to their disability* unless a school can show it can objectively justify its actions or responses. This means schools must show their actions are appropriate and necessary, for legitimate reasons and are a proportionate means of achieving a legitimate aim.

Schools also have a duty to make reasonable adjustments under the Act. This means where an employee is placed at a substantial disadvantage compared to other members of staff who are not disabled, schools have a duty to take reasonable steps to try and avoid that disadvantage. Schools are *not* required to take steps that are unreasonable however and in deciding whether an adjustment is reasonable, the following factors will be taken into account; - the size and resources a school has, practicability, health and safety, how effective the adjustment will be, the interests of others and the extent of any disruption and cost.

There are three elements to the duty to make reasonable adjustments - changing how things are done, changing physical features of a school and providing extra equipment (auxiliary aids and services). Examples of reasonable adjustments which may be considered by a school when managing employees under this policy are set out below.

The Public Sector Equality Duty (PSED) detailed in S149 of the Act means that when making decisions and when applying policies schools have a duty to consider how their actions may affect people with protected characteristics. The duty has three parts meaning schools must have due regard to the need to eliminate unlawful discrimination; to advance equality of opportunity between people who share a protected characteristic and those who do not and to foster good relations across all protected characteristics. Schools *must* take their PSED into account in the application of this policy and when making decisions relating to/following AMRs and AMHs in respect of employees with a disability.

DEFINITION OF DISABILITY

A person has a disability under the Act if: -

- they have a physical or mental impairment which 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' - more than minor or trivial.
- 'long-term' - the effect of the impairment must have lasted or is likely to last for at least twelve months (n/b there are special rules covering recurring or fluctuating conditions).
- 'normal day-to-day activities' - includes everyday things like eating, washing, walking going shopping, reading, writing, having a conversation, moving around, going outdoors unaccompanied, having the ability to follow instructions and carry out general work activities.

There are some conditions that are automatically counted as a disability under the Act and there are some conditions that are excluded. There are some conditions that *might* be regarded as a disability depending upon whether the above definition is satisfied.

Note - The definition of a disability is a legal **not** a medical issue. Medical evidence is still highly relevant however and will always be important in considerations around reasonable adjustments. Medical opinion must be taken into account by schools in AMRs and AMHs and will be particularly important in AMHs where the dismissal of an employee is being considered.

EXAMPLES OF REASONABLE ADJUSTMENTS

Examples of reasonable adjustments during the attendance management process: -

- modifying the triggers when reviewing an employee's record of absence;
- discounting certain periods of absence related to an employee's disability;
- adjusting working arrangements;
- altering working hours;
- providing extra breaks;
- changing work location;
- changing duties or reallocating tasks;
- adjusting an employee's physical environment/premises;
- providing a car parking space closer to school;
- acquiring or modifying equipment such as a special chair or an adapted keyboard;
- providing appropriate training or modifying instructions or reference manuals;
- providing supervision;
- authorising absence for medical appointments, assessment, treatment, counselling or rehabilitation activities;
- allowing a period of disability leave.

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 School's 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's HR and People service. Any transfer will also require the School to obtain the employee's agreement. All decisions taken with regard to determining whether the School considers an adjustment is reasonable or not must be documented. The rationale for reaching such decisions should also be documented.

Appendix 2

Return to work interview form (template)

Surname

Forenames

Address

Job title

**Payroll/
Personnel
number**

School

Details of sickness Absence

**First day & date
of absence**

***If applicable
finishing time
of last working day
before sickness**

**Last day &
date of absence**

***Starting time
of shift on return to
work**

**Number of working
days absent**

Industrial injury YES NO

**Is this absence Disability
Related** YES NO

Nature of Sickness

Name and address of General Practitioner

Declaration

I have/have not* claimed National Insurance Sickness/Industrial Injury benefit* for this absence

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 One Education's Sickness Scheme for the period of sickness indicated

(*delete as appropriate)

Signed:

Date:

(Section to be completed by manager and employee)

1 Employee confirms fit 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 against employees?

YES/NO

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

YES/NO

7b Reason

8 Are there any general well-being / work-life balance concerns?

9a Is there a need for any follow-up action in relation to the employee's 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

10 Employee comments

Signed – Headteacher/Nominated person

Date

Signed - Employee

Date