

Policy for dealing with Medical Capability issues (TEACHERS)

Contents

1. Scope
2. Definition
3. Objective
4. Model Policy Application
5. Principals
6. Normal Supervisory Process/Informal Stage
7. Non- Attendance / Sickness Absence
8. Formal Procedure – Stage One - Persistent short term absence
9. Formal Procedure – Stage Two - Persistent short term absence
10. Formal Procedure – Stage Three- Persistent short term absence
11. Long Term Sickness
12. Decision to Dismiss
13. Dismissal
14. Appeal
15. Points to Note
16. Role of Governors
17. Grievances

Appendix A – Conduct of the Capability Hearing

Appendix B – Appeals Process

Appendix C – Conduct of Capability Appeals Hearing

Appendix D – Absence Management Flow Chart – Persistent Short Term Absence

Appendix E – Absence Management Flow Chart – Long Term Sickness Absence

1. SCOPE

- 1.1 This Procedure shall apply to all employees of *Aspiring Foundations Federated Nursery Schools* including temporary and part time employees. The Procedure shall not apply to employees during their probationary periods.

2. DEFINITION

- 2.1 Medical Capability relates to an employee's health or other physical or mental aspects that affect their ability to do the job for which they are employed. It therefore deals with the following:

- **Unsatisfactory levels of attendance, sickness absence/ill health**

3. OBJECTIVE

- 3.1 To encourage and assist an employee to improve their attendance to a level acceptable to the organisation within the appropriate timescales.

4 MODEL POLICY APPLICATION

- 4.1 The Capability Procedure will apply to teachers in all maintained schools and unattached teachers employed by the local authority, in each case where they are employed for one term or more. It shall not apply to teachers in Academy Schools.
- 4.2 Advice can be sought at any stage of the procedure from the School's HR Adviser.
- 4.3 It does not apply in circumstances where a teacher is not registered with the Teaching Agency or fails to gain Qualified Teacher Status. These matters will be dealt with in accordance with the disciplinary procedure
- 4.4 The Headteacher is responsible for the application of the formal procedure but may delegate some stages of the procedure to other members of the management team or to an advisor from outside the school.
- 4.5 In the case of the Headteacher being subject to the Capability Procedure, the Chair of Governors will be responsible for its application but may delegate some stages to an advisor from outside the school.
- 4.6 The decision to recommend dismissal of staff to the Governing Body should always be taken by the Headteacher (or Chair of Governors if head subject to procedure).

5. PRINCIPLES

- 5.1 Capability issues must be dealt with fairly and reasonably and within the rules of natural justice. Particular sensitivity needs to be used when dealing with an employee whose ill health is affecting their performance at work. The following principles underpin this procedure:
- (a) To encourage a sensitive, imaginative, realistic and constructive approach by all involved in a capability issue, including the employee concerned.
 - (b) To confirm that the responsibility for resolving capability issues rests initially with the line manager and finally with the Headteacher or Full Governing Body.
 - (c) To ensure that the capability issues are dealt with efficiently, within agreed timescales and with clear outcomes.
 - (d) To recognise the rights of the employee in relation to information, the opportunity to explain their position, to representation by a trade union representative or fellow employee of their choice, and the right of appeal.
 - (e) To recognise the business needs of the Organisation.
 - (f) To recognise that if at the end of the process it is not possible to improve an employee's level of attendance, continued employment cannot be guaranteed.
 - (g) To confirm that if at any stage in this Procedure it becomes apparent that the matter is one of discipline rather than one of capability, it is appropriate to switch to the application of the Disciplinary Procedure.

6. NORMAL SUPERVISORY PROCESS – INFORMAL STAGE

- 6.1 Initial problems will be dealt with in the normal supervisory/management process and will not form part of the formal procedure. Line Managers/Head Teachers will monitor any issues and ensure that they do not go on indefinitely. It is anticipated that the process will not exceed a timescale of 6 months. There is no right of appeal at the informal stage of the procedure.
- 6.2 Once problems have been identified initial discussions should be arranged between the Line Manager/Head Teachers and the employee.

These should include;

- A clear explanation of the area/s causing concern ensuring that the employee is aware of the standards that are required of them
- Discussing possible causes/problems/difficulties that may impact on the employees attendance at work
- Identifying reasonable practical help/assistance/training to improve the level of attendance(this may include advice from the school's HR provider, or referral to Occupational Health provider
- Reasonable alterations to the duties which are consistent with the needs of the service but do not change the overall nature of the job
- Providing close supervision and monitoring
- Setting targets, programmes of action and a timescale for improvement
- Encouragement and assistance to Improve

- Training in proportion to issue
- Ensuring the employee is aware that failure to reach the required standards could ultimately result in the termination of the Contract of Employment.
- Reviewing progress with the employee in accordance with the agreed timescales

6.3 This list is neither exclusive nor exhaustive, individual cases will be dealt with on their merits. As an example, in the case of long-term ill health, it may be because of the illness that the normal supervisory process would not be applicable and there would be a move directly into the formal stages of the procedure. However whatever action is taken, this should not come as a surprise to the employee.

6.4 A record of the discussions with the individual must be kept and a copy given to the employee. If towards the end of the agreed review period it appears that there has been insufficient improvement against the targets set the employee should be advised that there may be a need to move into the formal procedure and that they may wish to contact their trade union representative or a fellow employee of their choice. At this stage the employee should be given a copy of the Capability Procedure.

7 Non Attendance/Sickness Absence

7.1 In situations where an employee's attendance/sickness record is giving some cause for concern, then the employee's line manager/head teacher or other specified member of staff will discuss those concerns with the employee, providing support and counselling where appropriate. It is essential that any message conveyed in this matter is clear and unambiguous.

7.2 If appropriate, the line manager/head teacher will explore with the employee whether there are any underlying medical reasons for the absences/prognosis regarding return to work/future attendance.

7.3 As part of the sickness absence meeting the circumstances around the sickness absence should be taken into consideration. If no extenuating circumstances are revealed then the employee should be advised that attendance will be monitored and their line manager/head teacher should also make the employee aware of the consequences of further sickness absence i.e. move into the formal stages of this Procedure. The line manager/head teacher will share the notes of the meeting with the employee.

7.4 If an employee has a disability as defined under the Equality Act 2010 advice should be sought from the schools HR and Development Officer, the local Disability Employment Adviser at Job Centre Plus or the Occupational Health Provider. Contact details for the Disability Employment Adviser are available from your HR and Development Officer.

8 FORMAL PROCEDURE – STAGE ONE – Short Term Absences

8.1 If, following the normal management supervisory process (informal stage), there is no obvious improvement in the attendance of the employee or if there are signs of patterns emerging in an employee's absence then the line

manager/head teacher will formally meet with the employee to advise that the level of absence is unacceptable.

- The employee may be accompanied at the meeting by their trade union representative or a work colleague of their choice.
- The employee, or their representative, will have the opportunity to offer an explanation regarding the reason/s for failing to reach the required standard of attendance
- The option available is to advise the employee that a referral will be made to Occupational Health, by the employees current manager, to determine whether there is an underlying medical condition that may be affecting their ability to attend work and to establish whether any additional training/support may be required. This will be confirmed in writing to the employee together with details of the Appeal rights. Appendix B

8.2 The employee's attendance will continue to be monitored/reviewed at regular intervals and recorded during the twelve month period and is expected to improve significantly. The employee will receive confirmation of any meetings in writing and will be also be provided with notes of all meetings

8.3 If the attendance does not improve during the twelve month period then the line manager/head teacher will move to Formal Stage Two of the Procedure.

8.4 The individual must be advised, by the line manager/head teacher, of the likely consequences should their attendance not improve and is not sustained for the duration of the warning.

9 FORMAL PROCEDURE – STAGE TWO – Short Term Absences

9.1 Where an employee fails to improve their attendance during the twelve month period, then a Formal Stage Two Hearing will be convened.

9.2 The Clerk to the Staff Dismissal Committee will;

- Notify the employee, in writing, of the formal hearing. The letter will refer specifically to this procedure and give (in addition to date, time and place) details of who will be present; full and concise details of the lack of capability; the right to be accompanied by a trade union representative or work colleague of their choice, and the right to ask individuals (to be notified to the senior manager three working days in advance) to give supporting evidence.
- The notification will be sent out at least ten working days in advance of the hearing. An additional copy of the notification will be included for the individual to pass to their representative.
- The notification will be hand delivered to the employee or sent by first class mail to their home address.

9.3 The purpose of the hearing will be to consider the following:

- The issues that have been identified as causing concern
- What action has been taken to improve attendance
- The reasonableness of management support
- Does the individual require further support e.g. from occupational Health/G.P./other agencies

- What are the consequences of failing to achieve? (i.e. the impact on children's education)
 - What the expected level of improvement will be
- 9.4 Immediately after the final summaries the Staff Dismissal Committee will consider the range of options available. These include: (This list is neither exclusive nor exhaustive).
- Further time should be allowed to enable the employee to reach the required standards
 - The employee is issued with a written warning which will remain on the employee's record for six months. This may be referred to if there is any further absence and may trigger a Stage three Hearing
 - The employee be issued with final written warning which will remain on the employees record for 12 months
 - Dismissal with notice or pay in lieu of notice
- 9.5 The employee will be notified of the decision in writing, signed by the Chair of the Staff Dismissal Committee and will be either hand delivered to the employee or sent by first class (*as appropriate*) mail to the employees home address. The letter will also notify the employee of any rights of appeal.

10 FORMAL PROCEDURE – STAGE THREE – Short Term Absences

- 10.1 If a warning is given at Stage Two of this Procedure and despite encouragement and assistance a member of staff is unable to reach the required standard, a formal Stage Three Hearing will be called. The Staff Dismissal Committee will;
- notify the individual of the formal hearing. The letter will refer specifically to this Procedure and give (in addition to date, time and place) details of who will be present; full but concise details of the lack of capability; the right to be accompanied by a trade union representative or work colleague of their choice and if the case is proven may ultimately lead to dismissal.
 - The notification will be sent out at least ten working days in advance of the hearing. An additional copy of the notification will be included for the individual to pass to their representative.
 - The notification will be hand delivered to the employee or sent by first class mail (*as appropriate*) to their home address. The Hearing will be conducted in accordance with **Appendix A**.
- 10.2 The purpose of the hearing will be to consider the following:
- The issues that have been identified as causing concern
 - What action has been taken to improve attendance
 - The reasonableness of management support
 - Does the individual require further support e.g. from Occupational Health/G.P./other agencies
 - What are the consequences of failing to achieve? (i.e. the impact on the Children's education)
 - What the expected level of improvement will be need to include timescale

- 10.3 Immediately after the final summaries the Staff Dismissal Committee will consider the range of options available. These include: (This list is neither exclusive nor exhaustive).
- Further time should be allowed to enable the employee to reach the required standards
 - The employee be issued with final written warning which will remain on the employees record for 12 months. Any further occasions of sickness absence may lead to termination of the Contract of Employment
 - Dismissal with notice or pay in lieu of notice
- 10.4 The employee will be notified of the decision, verbally at the end of the Hearing, and this will be followed up in writing within 5 days of the Hearing. The letter will be signed by the Chair of the Staff Dismissal Committee and will be either hand delivered to the employee or sent by first class mail to their home address. A copy of the decision letter will be sent to the employee's representative. The letter will also notify the employee of any rights of appeal – Appendix B.

11 Long Term Sickness

During the period of long term absence line manager/head teacher should maintain regular contact with employees on an informal basis in addition to the formal process set out below. The purpose of the contact is to ensure employees are offered all appropriate support.

- 11.1 Where the absence has been prolonged and/or there is no indication of a return to work a referral will be made by the line manager/head teacher to the school's Occupational Health provider. Your HR and Development Officer will advise on the content of the referral. The employee must be informed, in writing, by the line manager/head teacher that they are being referred to the Medical Adviser at Occupational Health and that they have a contractual obligation to take all reasonable measures to attend. In addition the line manager/head teacher will also advise the employee that should they fail to attend the appointment then they will incur the subsequent cost.
- 11.2 On receipt of the report from your Occupational Health provider a meeting must be arranged between the line manager/head teacher and employee. The purpose of the meeting will be to;
- Discuss the reason for absence and the occupational health report
 - Establish a likely return to work date, if possible
 - Identify any work related issues that may be associated with the sickness absence and how these concerns can be addressed
 - Discuss what support (if any) can be offered to assist an early return to work e.g. phased return, restricted duties.
 - At the meeting other options may be discussed, e.g. redeployment, Ill health retirement. These should only be discussed if advised by Occupational Health/G.P. that the employee is unable to return to their substantive post.
 - Explain to the employee what will happen should their absence continue.
 - The employee can be supported at the meeting either by a trade union representative or work colleague

- 11.3 In cases where the employee has been absent for a long period of time and/or there is no prospect of a return to work in the foreseeable future a formal Stage Three Hearing will be convened. Details are set out in section 7.1 and 7.2 of this policy.
- 11.4 Immediately after the final summaries the Staff Dismissal Committee will consider the range of options available. These include: (This list is neither exclusive nor exhaustive).
- Further time should be allowed to enable the employee to reach the required standards
 - Dismissal with notice or pay in lieu of notice
- 11.5 The employee will be notified of the decision verbally at the end of the Hearing and this will be confirmed in writing, signed by the Chair of the Staff Dismissal Committee and will be either hand delivered to the employee or sent by first class mail. The letter will also notify the employee of any rights of appeal – **Appendix B**.

12 Decision to dismiss

The power to decide that members of staff should no longer work at this school has been delegated to *one or more governors acting with the head teacher*.

13 Dismissal

Once the Governing Body has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it.

Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school (**Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only**).

14 Appeal

- 14.1 If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time the grounds for appeal.
- 14.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a Trade Union Representative or colleague will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.
- 14.3 The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.
- 14.4 The teacher will be informed in writing of the results of the appeal hearing as soon as possible.

15 Points to Note

- 15.1 The allocation of the responsibilities, between senior managers, Headteacher and Governors should be made clear and adhered to.
- 15.2 Regard should be paid to the resources available to the school.
- 15.3 It must be made clear to the teacher involved in the procedure – who is doing what – in relation to monitoring, supporting and managing the procedure.
- 15.4 If the (head) teacher resigns, once the formal procedure has commenced, then a referral to the Teaching Agency is made. Cases where the employer has ceased to use the services of teachers registered with the Teaching Agency or might have ceased to use those services had the teacher not ceased to provide them, should be referred directly to the Teaching Agency. There is a statutory duty to make a referral in the case of dismissals.
- 15.5 Throughout the procedure all relevant documentation will be available to the teacher.

16 Role of Governors

- 16.1 Governors may be involved with the Capability Procedure at the formal stage, and then only in considering dismissal and or appeals against warnings or dismissals.
- 16.2 The exception to this will be where a Governor or Governors are involved in the Capability Procedure against a Headteacher.
- 16.3 The use of Governors to hear any grievances or appeals against warnings will be limited to ensure a sufficient number of impartial Governors remain available for any Staff Dismissal and Dismissal Appeal committees. Usually, at least three would be required for each committee.
- 16.4 If three is not reasonably practicable, the number can be reduced to two. There will not be more Governors on the Staff Dismissal Committee than on the Appeal Committee.

17 Grievances

- 17.1 In exceptional circumstances, a teacher may raise a grievance about the behaviour of the Headteacher or Line manager during the course of the Capability Procedure.
- 17.2 Suspension of the Capability Procedure will only be considered where there is strong evidence that the teacher has been mistreated. In such cases, consideration will be given to bringing in another manager to deal with the Capability case and, where appropriate, the case will continue with the same timetable.

Appendix A

CONDUCT OF THE CAPABILITY HEARING

The procedure to be adopted at the formal capability hearing will be:

1. The hearing will be conducted by the Head teacher/Staff Dismissal Committee. They will be accompanied by a HR and Development Lead Officer who was not involved in the earlier stages of the procedure.
2. The Head teacher/Staff Dismissal Committee will satisfy themselves that the employee understands the purpose of the hearing, the nature of the capability issue(s) and the possible implications arising from it.
3. The case against the employee will normally be presented by the responsible Line Manager/Headteacher (in instances involving the Head teacher this would be the Chair of Governors) who had investigated the matter or such other manager with sufficient knowledge. They will describe the case and the presentation may include witnesses, written statements or other documents where these are necessary. (If written statements or other documents are to be presented copies of these should normally be sent to the employee and their representative with the letter convening the hearing).
4. The employee and/or representative will be given the opportunity to question the presenting line manager/head teacher as well as any witnesses who have given evidence.
5. The employee or their representative will then be invited to respond to the case presented. The employee may also produce witnesses, written statements or other documents in support of their case. (Where written statements or other documents are to be presented copies should be provided to the Head teacher/Staff Dismissal Committee and presenting manager at least three working days before the hearing). Where witnesses are school employees they will be given reasonable time off with pay to attend the hearing.
6. The presenting line manager/head teacher will be given the opportunity to question the employee, their representative and any witnesses called.
7. At any stage during the hearing the Staff Dismissal Committee and the HR and Development Lead Officer may ask questions of the employee, the presenting line manager/head teacher or any other such person, as they may consider appropriate in order to ascertain the facts and arguments. The formulation of views before the end of the hearing should be avoided.
8. The presenting line manager/head teacher will then be invited to make a closing statement not introducing any new material.
9. The employee or their representative will be given the opportunity to make a closing statement also without introducing any new material.
10. Both parties will withdraw to allow the Head Teacher/Staff Dismissal Committee to review and consider the evidence in conjunction with the HR

and Development Lead Officer. If recall of the parties is necessary to clear points of uncertainty, both parties are to return, notwithstanding that only one is concerned with the point giving rise to doubt.

11. The Head Teacher/Staff Dismissal Committee will then recall both parties to inform them of the decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made within five working days of the hearing concluding. The decision should be confirmed in writing and delivered to the employee either by hand or first class post with a copy to the employee's representative.

Appendix B

APPEALS PROCESS

1. At each stage where a warning is issued, the (head)teacher will have the right of appeal against the warning.

Appeals will normally be restricted to considering:

- (i) the reasonableness of the decision.
- (ii) any relevant new evidence.
- (iii) any procedural irregularities.

Appeals against warnings may be heard by:

- (a) a panel of governors.

If there are insufficient members of the governing body available to form sufficient panels to hear any subsequent recommendation regarding the capability of the (head)teacher, appeals against warnings under this procedure may, exceptionally, be heard by

- (b) a senior manager at the school.
or
- (c) an LA advisor.

The impartiality of Governors will not be compromised.

2. A (head)teacher who has been dismissed by the Staff Dismissal Committee may appeal against the decision to the Staff Dismissal Appeals Committee.
3. The (head)teacher is entitled to be accompanied at an appeal hearing by a trade union representative or work colleague. New evidence may be considered at an appeal.
4. The decision of the person(s) hearing the appeal will be confirmed in writing.
5. There will be no further appeal against this decision.
6. Where an appeal is upheld, the matter will be referred back to the Headteacher or manager to be reconsidered for further appropriate action.
7. Where monitoring is ongoing, it will not be halted by a pending appeal.

Appendix C

CONDUCT OF THE CAPABILITY APPEALS HEARING

The procedure to be adopted at the formal capability hearing will be:

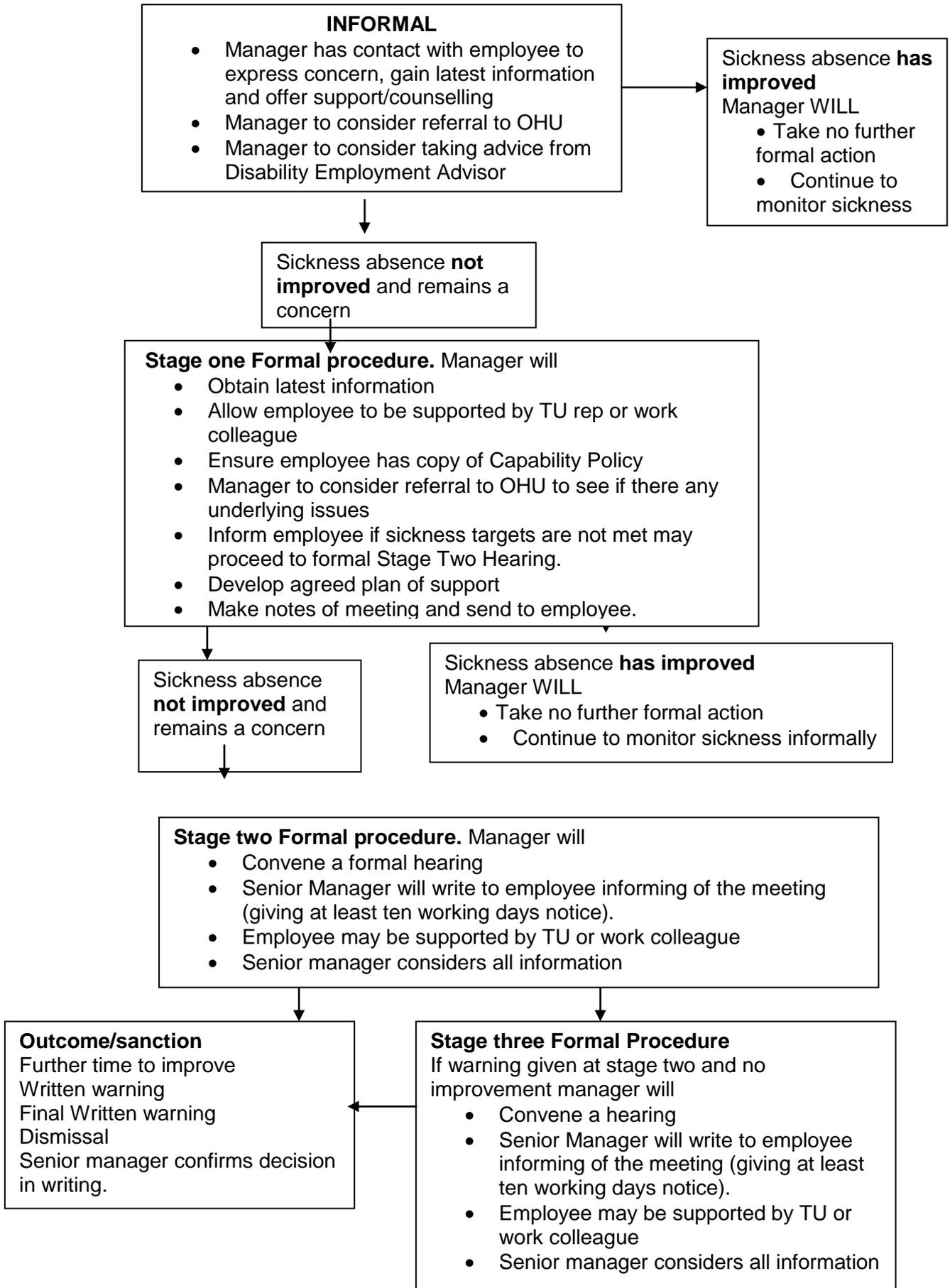
1. The hearing will be conducted by the Staff Dismissal Appeals Committee. They will be accompanied by a HR and Development Lead Officer who was not involved in the earlier stages of the procedure.
2. The Staff Dismissal Appeals Committee will satisfy themselves that the employee understands the purpose of the hearing, the nature of the capability issue(s) and the possible implications arising from it.
3. The case against the employee will normally be presented by the responsible Head teacher/Chair of the Staff Dismissal Committee who issued the initial decision. They will describe the case and the presentation may include witnesses, written statements or other documents where these are necessary. (If written statements or other documents are to be presented copies of these should normally be sent to the employee and their representative with the letter convening the hearing).
4. The employee and/or representative will be given the opportunity to question the presenting Head teacher/Chair of the Staff Dismissal Committee as well as any witnesses who have given evidence.
5. The employee or their representative will then be invited to respond to the case presented. The employee may also produce witnesses, written statements or other documents in support of their case. (Where written statements or other documents are to be presented copies should be provided to the Staff Dismissal Appeals Committee and presenting Head teacher/Chair of the Staff Dismissal Committee at least three working days before the hearing). Where witnesses are school employees they will be given reasonable time off with pay to attend the hearing.
6. The presenting Head teacher/Chair of the Staff Dismissal Committee will be given the opportunity to question the employee, their representative and any witnesses called.
7. At any stage during the hearing the Staff Dismissal Appeals Committee and the HR and Development Lead Officer may ask questions of the employee, the presenting Head teacher/Chair of the Staff Dismissal Committee or any other such person, as they may consider appropriate in order to ascertain the facts and arguments. The formulation of views before the end of the hearing should be avoided.
8. The presenting Head teacher/Chair of the Staff Dismissal Committee will then be invited to make a closing statement not introducing any new material.
9. The employee or their representative will be given the opportunity to make a closing statement also without introducing any new material.

10. Both parties will withdraw to allow the Staff Dismissal Appeals Committee to review and consider the evidence in conjunction with the HR and Development Lead Officer. If recall of the parties is necessary to clear points of uncertainty, both parties are to return, notwithstanding that only one is concerned with the point giving rise to doubt.

12. The Staff Dismissal Appeals Committee will then recall both parties to inform them of the decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made within five working days of the hearing concluding. The decision should be confirmed in writing and delivered to the employee either by hand or first class post with a copy to the employee's representative.

Appendix D

ABSENCE MANAGEMENT FLOW CHART – PERSISTENT SHORT TERM SICKNESS



Appeal

Employee must lodge appeal within 10 working days of receipt of written notification

Appeal hearing convened within 21 working days

Employee will be given at least 5 working days notice of hearing

Appeal against written warnings and final written warnings will be to Operational Director/Divisional Manager/Strategic Director

Appeal against dismissal will be to members of Appeals Panel

Appendix E

ABSENCE MANAGEMENT FLOW CHART - LONG TERM SICKNESS ABSENCE

