

# Handsworth Grange Community Sports College

## *Capability Policy*

*(Incorporating the management of sickness absence  
for teachers and support staff)*



**Minerva**  
Learning Trust

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## **PREAMBLE**

*The Minerva Learning Trust (MLT) asks all partner schools to adopt and use this policy unless a partner school and the Minerva Learning Trust have discussed and agreed alternative procedures that they both agree would better suit the partner school's particular circumstances.*

*Any reference in this policy to the Governing Body or the school relates to the independent governing bodies and schools of all Minerva Learning Trust partners. Partner schools and their respective Governing Bodies have full delegated powers from the Trust and have responsibility for the operational implementation of the policies and their associated procedures. They are encouraged to seek advice and support from Minerva Learning Trust on matters of policy and procedure in circumstances where decisions may potentially impact on the Trust as a whole, e.g. dismissing staff or making staff redundant. In such circumstances, at least one member of the relevant panel should be a member of the Trust.*

This policy has been developed with reference to the 2012 guidance from the Department of Education regarding Schools Teacher's Appraisal and Capability. Although it is separate from the school's Performance Management policy it is closely related as performance management is a continuous process. Therefore, references to the school's Performance Management policy for teachers, support staff and associated documents are included where relevant.

It is recognised that the vast majority of teachers, support staff and Headteachers in schools make a valuable contribution to the education and progress of the pupils in the city. All staff and Headteachers' performance is continually monitored under the Performance Management policy, and support is given to them to help them further develop their skills and improve their performance. The capability procedure will only be used to manage the minority of staff and Headteachers whose performance in their job is causing concern and potentially jeopardising the education and progress of pupils.

This policy was written in line with The School Staffing (England) (Amendment) Regulations 2012, the Teachers' Standards, the Handsworth Standard for Teachers and Support Staff and other relevant guidance produced by the Department for Education, effective from 1st September 2012. The document adheres to the ACAS Code of Practice on disciplinary and grievance procedures.

It will be reviewed every two years or when changes in legislation or associated policies require an earlier review to take place.

## SECTION 1: POLICY AND PRINCIPLES

### 1.1 Purpose

This policy sets out the formal stages of the capability process for staff which could result in the colleague receiving formal warnings or ultimately being dismissed from their post where they are failing to reach the standard of performance required.

This policy is driven by the school's plan for improving educational provision and performance and the requirements of colleagues:

- a) If they are teachers, to consistently meet the 8 Teachers' Standards and Part 2 of the Standards in relation to what should be reasonably expected of each individual based on their role, experience and expertise. If they are Support Staff, to consistently meet any relevant occupational standards
- b) Consistently meet the responsibilities and expectations of a job description, any TLR responsibilities and, where relevant, the expectations of someone on the UPR.
- c) Meet the requirements of the Handsworth Standard.

### 1.2 Application of the Policy

The policy applies to the Headteacher and to all Teachers and Support Staff employed by those schools in Minerva Learning Trust that have agreed to adopt this policy. It will not apply to teachers undergoing induction (i.e. Newly Qualified Teachers). A separate procedure applies where there are concerns about the performance of a newly qualified teacher.

The policy/procedure will be used:

- (a) In circumstances where necessary steps have been taken to try and address the underperformance of a teacher (or Headteacher) through the Appraisal Procedure, but this has not resulted in the individual reaching the expected standard of performance.
- (b) Where concerns about performance are so serious that informal measures for managing capability are not felt to be appropriate and formal action is required. This could include moving straight to a dismissal hearing in severe cases, for example safeguarding issues.
- (c) The Minerva Learning Trust maybe invited by the school to advise and support the process at any stage. At Stage 3 the Trust must always be informed, invited to comment and to participate.

The application of the capability procedure by the Minerva Learning Trust will be supportive and guidance will be offered to improve performance. However, the seriousness of the situation will be stressed to the colleague along with the consequences of failing to make the necessary improvements within a defined timescale. Colleagues are entitled to be represented by a trade union representative or an employee of Minerva Learning Trust throughout this formal process.

In accordance with The School Staffing (England) (Amendment) Regulations 2012, in the case of a colleague who has been subject to capability procedures during the last two years of their employment with the school and who applies for a teaching post at another school, the Governing body will provide written details of their concerns which gave rise to this, the duration of their proceedings and the outcome.

The capability procedure does not deal with lack of capability due to ill health (*in such cases the Sickness Absence Procedure should be used*), nor with misconduct (*in such cases the Disciplinary Procedure should be used*), which may be defined as an act or omission by a colleague which is considered to be unacceptable professional behaviour. However, a colleague may be managed under more than one procedure at any one time.

Whenever a concern is raised regarding any aspect of the operation of the capability policy/ procedure it should be dealt with as promptly as possible and within this procedure.

See appendix A: A flowchart to show the link between the performance management and capability procedures.

*Note: The term teacher throughout this procedure can mean teacher, Headteacher, Deputy Headteacher, Assistant Headteacher or Teacher with management allowances.*

### **1.3 Representation**

Representation by colleague trade unions is encouraged. An employee has a legal right to be accompanied by their trade union representative or another employee of Minerva Learning Trust (*or an employee of the school where the Governing Body is the employer*) at every stage of this procedure.

### **1.4 Appeal Rights**

The school will give the employee the right of appeal against any formal warning issued under the procedure and the right of appeal against a decision to dismiss him/her at a stage three hearing. In the event of the stage 3 process an appropriate representative of the Minerva Learning Trust must be informed, invited to comment and to participate. In order to register an appeal the colleague will need to write to the Headteacher or Chair of Governors as appropriate within five working days of the hearing and will need to specify the reasons for the appeal. Appeals should normally be restricted to:

- Considering the reasonableness of the decision made;
- Any relevant new evidence;
- Procedural irregularities.

## **SECTION 2: PERFORMANCE CONCERNS**

### **2.1 Identification of unsatisfactory performance**

Concerns over a colleague's job performance may arise from evidence through a variety of sources. The colleague's manager should refer to the Teacher Standards, the School's Code of Conduct any other relevant occupational standards along with the colleague's Job Description and Person Specification when assessing the gap in performance.

In the majority of cases, these concerns will be primarily addressed with the colleague on an informal basis as appropriate during the year e.g. at line management meetings, during the performance management reviews. However, if concerns are of such a serious nature that they have a significant impact on service delivery, the manager may progress to the Capability Procedure immediately.

Managers must be clear that there are sufficient concerns regarding the colleague's performance, and there is a pattern of under-performance sufficient to warrant dealing with the matter through the Schools' Capability Procedure.

### **2.2 Informing the Colleague**

Where a manager believes it is appropriate to instigate the Capability Procedure they will:

- Speak confidentially on a one-to-one basis with the colleague
- Ask them to attend (in writing) a stage 1 formal capability hearing, giving a minimum of 5 working days notice
- Make them aware that the purpose of the meeting will be to discuss concerns regarding their performance
- Offer them the right of representation
- Provide them with a copy of the Capability Policy.

Where the issues have been considered informally during the performance management cycle but the required level of performance has not been achieved - the colleague will have been informed of this at an appropriate meeting with the relevant line manager(s) and had opportunity to discuss this with the manager/Headteacher before it is confirmed in writing to them.

## 2.3 Capability Support Plan

In preparation for the meeting, the manager will produce a draft Capability Support Plan and give it to the colleague for consideration at the meeting. The Capability Support Plan should make reference to the relevant standards (*e.g. Teacher standards, UPR expectations*) and should be linked to the colleague's performance management objectives, their Job Description and Person Specification. Where the capability procedure has commenced as a result of concerns raised during the performance management procedure, the Capability Support Plan should detail evidence of the concerns raised and support provided during the informal support and monitoring period.

## SECTION 3: CAPABILITY HEARINGS

### 3.1 Stage One Capability Hearing

#### **In Attendance:**

The stage one capability will be heard by the Headteacher or a Governor, where the issues relate to the Headteacher they will be advised by an HR representative. Colleagues have the right to be accompanied to this hearing by a trade union representative or work colleague who must be an employee of the Minerva Learning Trust. The accompanying representative has a right to address the meeting but no right to answer questions on the colleague's behalf.

#### **Process:**

The purpose of the hearing is to establish the facts and determine whether a warning should be issued together with confirmation of the support and monitoring which will take place to help the colleague reach the standard of performance required.

At the meeting, the colleague will be given an overview of the entire process including all possible outcomes. The Headteacher (or Governor) will outline the performance concerns, by clearly identifying the nature of the problem(s) and providing supporting evidence (*e.g. information collated during the support and monitoring period during the performance management cycle or other evidence to demonstrate under-performance*).

The colleague will be offered the opportunity to respond and outline their position. If the colleague wishes to appeal against being managed within the capability procedure, they should include this within their case for consideration at the hearing.

#### **Potential Outcomes:**

The Headteacher (or Governor) conducting the hearing may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through support and monitoring under the appraisal process.

The Headteacher (or Governor) conducting the hearing may also adjourn the meeting if they believe further investigation is required or more time is needed to consider any additional information.

Following a full discussion of the issues raised, including the draft Capability Support Plan, the Headteacher (or Governor) will decide whether it is appropriate to issue a Stage One Written Warning. Where this is the case, a final version of the Capability Support Plan will be agreed and confirmed to the colleague in writing within 5 days of the hearing, covering the following:

- Key issues to be addressed from the Teaching Standards, Job Descriptions and Person Specifications

- Any weightings attached to the key issues
- The behaviours the colleague needs to demonstrate
- The actions that need to be taken.
- Any additional support and/or resources needed.
- The arrangements for monitoring and assessment and the timescales involved.
- The success criteria for each issue

The objectives set within the Capability Support Plan will be **Specific, Measurable, Achievable, Realistic** and **Time-bound** and will be appropriate to the colleague's role and level of experience. In setting the objectives, the manager will have regard to what can reasonably be expected in the context of roles and responsibilities. Targets may be weighted in terms of importance. When this occurs the weighting arrangements and how these may affect the overall outcome of the process should be made clear to the colleague at this stage and noted on the Capability Support Plan.

The person conducting the hearing should make the colleague aware that failure to improve within the set period could lead to a final written warning. In addition to the Capability Support Plan, notes will be taken at all formal meetings summarising the key points and a copy sent to the colleague.

### **3.2 Monitoring Timescales**

The time allowed for the colleague to demonstrate a significant improvement depends on the seriousness of the consequences of under-performance. Following the Stage One Formal Capability Meeting, the minimum timescale anticipated before a formal review meeting takes place is four weeks (*as recommend by the Department for Education*).

While the timescale will be determined on a case by case basis, evidence of a significant improvement will usually be required, within four to eight weeks. A significant deterioration in performance may bring forward the date of the review meeting. The timescale may also reflect the amount of time and support a colleague has already received. It will be for the Headteacher or Governor to determine if a longer timescale is justified.

### **3.3 Capability Support and Monitoring Period**

Support and monitoring functions should be delivered by different individuals, in line with the objectives that have been set. The manager should speak to all who are involved in monitoring and support to confirm their roles, the confidentiality and the timetable involved emphasising the confidentiality requirements. It is important that everyone follows the Capability Support Plan, including the timescale. If the plan is amended the reason will be discussed and agreed with the colleague as soon as possible.

If a colleague is absent due to sickness for a significant period during the process, managers should refer to the Sickness Absence Policy and consult with their HR provider. It may be necessary for an employee to be managed within both the sickness absence policy and capability policy at the same time. In these circumstances there may be one meeting where issues of both sickness and capability are discussed to avoid the colleague having to attend more than one meeting whilst ill.

### **3.4 Stage 2 Capability Review Meeting**

#### **In Attendance:**

The stage two capability review will be conducted by the Headteacher or Governor who issued the Stage 1 warning. They will be advised by a HR representative. Staff have the right to be accompanied to this meeting by a trade union representative or an employee of the Minerva Learning Trust. The accompanying representative has a right to address the meeting but not to answer questions on the colleague's behalf.

#### **Process:**

Following the period of support and monitoring a review meeting will be held in accordance with the timescale determined in the Capability Support Plan. Beforehand, the manager should ensure they have collated and reviewed any evidence which supports their concerns about performance. Any written evidence should be provided in advance of the meeting, with sufficient time for both parties to give due consideration to the content of the documents.

The colleague should receive a letter from the manager, a minimum of 5 working days before the meeting, confirming the date, time and venue and any written documentation.

At the meeting the manager will discuss progress against the Capability Support Plan using the evidence/feedback collected. The colleague will be invited to respond.

#### **Potential Outcomes:**

The manager will then decide which of the following outcomes is appropriate: -

#### **Outcome 1: Return to normal monitoring under the Appraisal Policy**

That the colleague has achieved and maintained the required standards of performance, as the Capability Support Plan has been successfully completed.

#### **Outcome 2: Extended monitoring**

If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period. This should be for a maximum of four weeks. It will be for the Headteacher or Governor to determine if a longer timescale is justified.

#### **Outcome 3: Issue Final Written Warning**

If the colleague has failed to show sufficient improvement towards achieving the targets agreed, it may be appropriate to issue a final warning. If this occurs, the colleague will receive an updated capability support plan and be subject to a further monitoring period. The Minerva Learning Trust must be kept informed at this point and invited to comment and/or participate in the process.

There may be occasions where specific targets are given greater weighting, and that if they are not achieved, despite others having been met, a decision is made that the individual has been unsuccessful. In such situations, the individual will be made aware, before the plan has commenced, of the significance of certain targets, when applicable.

### **3.5 Final Warning Review Meeting**

#### **In Attendance:**

The Headteacher or Governor who issued the Final Warning will be present. They will be advised by an HR representative. Colleagues have the right to be accompanied by a trade union representative or work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the colleague's behalf.

#### **Process:**

Following the monitoring and support period, the Headteacher or Governor will meet with the colleague to review their progress and determine if sufficient improvement has been made. The colleague will be given the opportunity to outline their view of the progress made. The Headteacher or Governor will either confirm progress and the colleague will return to normal appraisal process, or that insufficient progress has been made and confirm that a dismissal hearing will be held.

## **SECTION 4: STAGE 3 DISMISSAL HEARING**

### **4.1 Stage 3 Dismissal Hearing**

**In Attendance:**

In line with the Education Act 2002, Governing Bodies of maintained schools must appoint two separate sub-committees of not less than 3 Governors each to consider capability at work cases at the final stage when the dismissal of an employee is being considered. In a small school or schools experiencing Governor recruitment issues, it may be possible for sub-committees to have less Governors provided there are either equal numbers on both or a higher number on appeal. One panel will consider the case presented at Stage 3 and the second panel will consider any appeal against the outcome of the original hearing. The panels will be advised by a HR representative. Colleagues have the right to be accompanied to this hearing by a trade union representative or work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the colleague's behalf. The presenting manager/Headteacher may be supported by an HR Representative. An appropriate member of the Minerva Learning Trust Executive is entitled to attend in order to offer advice to the Headteacher/Governing Body in community schools and to keep the Trust informed.

**Process:**

A letter giving a minimum of 10 working days' notice should be sent to the colleague, informing them of the date, time and venue of the hearing and of the right to be accompanied by a trade union representative or work colleague. Where the colleague and/or representative are unable to attend on this date, a request should be made to the Chair of the hearing to offer an alternative date. The Chair of the hearing will determine whether this is appropriate taking account of the circumstances of the case and a suitable alternative arranged as soon as possible.

**Potential Outcomes:**

If the Panel decides there is insufficient evidence to demonstrate that the colleague is incapable of performing their role they may:

- Extend the period for monitoring and/or modify the targets, outline any further support required and set dates for the appropriate review process.

Or

- Conclude that sufficient progress has been made, therefore the capability process ends and the appraisal process recommences.

If the Panel decide that the colleague is not capable of undertaking the duties and responsibilities of their post, it should consider: -

- Dismissal on the grounds of capability with an appropriate period of statutory notice and/or contractual notice.

The school, in consultation with the Minerva Learning Trust, the employee and their representative, may recommend redeployment to a suitable post elsewhere in the Trust, if available. (For example, teachers who are not able to continue in leadership posts but are good classroom practitioners). Please refer to the Redeployment Policy and Procedure. This process will run concurrently with the colleague's notice period and Pay Protection does not apply in cases of redeployment for reasons of under-performance.

**4.2 Notice Periods**

An employee who is dismissed is entitled to contractual notice in accordance with their conditions of service.

Colleagues' notice can only be effective from the end of each term i.e. 30 April, 31 August, and 31 December. The Conditions of Service for School Teachers states the final date each term when notice can be issued. It must also be ensured that a teacher is given statutory notice, which is 1 weeks' notice for every year of service, up to a maximum of 12 weeks

### 4.3 Reporting the Dismissal

Following the appeal hearing, if the decision is to dismiss the employee, (or the employee chooses not to exercise their right to an appeal), the decision to dismiss will be notified to the Executive Body of the Minerva Learning Trust. The Executive Director of the Minerva Learning Trust will issue the dismissal notice within 14 days of receipt of this notification.

Where the employee is to be dismissed, he/she will normally be dismissed from all employment with the City Council unless this is not justified by the circumstances of the case. Where the employee is employed in more than one school, governors at each school will be required to consider the case.

### 4.4 References and Compromise Agreements

In accordance with The School Staffing (England) (Amendment) Regulations 2012, a teacher who has been subject to capability procedures during the last two years of their employment with the school and applies for a teaching post at another school, the Governing body of this school will provide written details of their concerns which gave rise to this, the duration of their proceedings and the outcome. *These regulations also need to be considered for the purposes of compromise agreements.*

### 4.5 Suspension from duty

At any stage of the procedure, where the colleague's performance is such that their continuing attendance at work may put them or other people at risk or may seriously detriment service provision, it may be appropriate to suspend the colleague from work with pay. A temporary transfer to another suitable post or worksite may be an alternative. This precautionary action should be taken after consultation with your HR provider. An employee is entitled to be accompanied to a suspension meeting by a trade union representative or work colleague, however, where a representative is not available, the suspension meeting will not be unreasonably delayed. In these circumstances it may be necessary to meet with the employee for the purposes of suspension and confirm arrangements in writing at a later date to both the employee and their representative.

## SECTION 5: APPEALS

### 5.1 Appeal against a recorded written or a final written warning

The employee's right of appeal against a written or final warning will be to the Headteacher, if the warning was issued by another member of the School Leadership Team/Manager. If the warning was issued by the Headteacher/Governor(s), the right of appeal would normally be as follows:-

Written warning	1 Governor
Final written warning	A panel of 3 Governors.

The employee must write to either the Headteacher or Chair of Governors, as appropriate, within 5 clear working days of receiving a warning, requesting an appeal hearing. **The letter must specify the reasons for an appeal.** The Headteacher/ Governor/Governor Panel will seek to hear the appeal within 10 clear working days of receiving the request.

The purpose of the appeal hearing will be to consider grounds upon which the employee is dissatisfied with the issuing of a warning under the Capability Policy and Procedure. The decision will be final and will be confirmed in writing to the employee within 3 clear working days of the appeal hearing.

### 5.2 Appeal against Dismissal

An appeal against dismissal will be a rehearing. The Executive Body of the Minerva Learning Trust must be kept informed over this process.

Schools are required to have a Governing Body Appeal Panel.

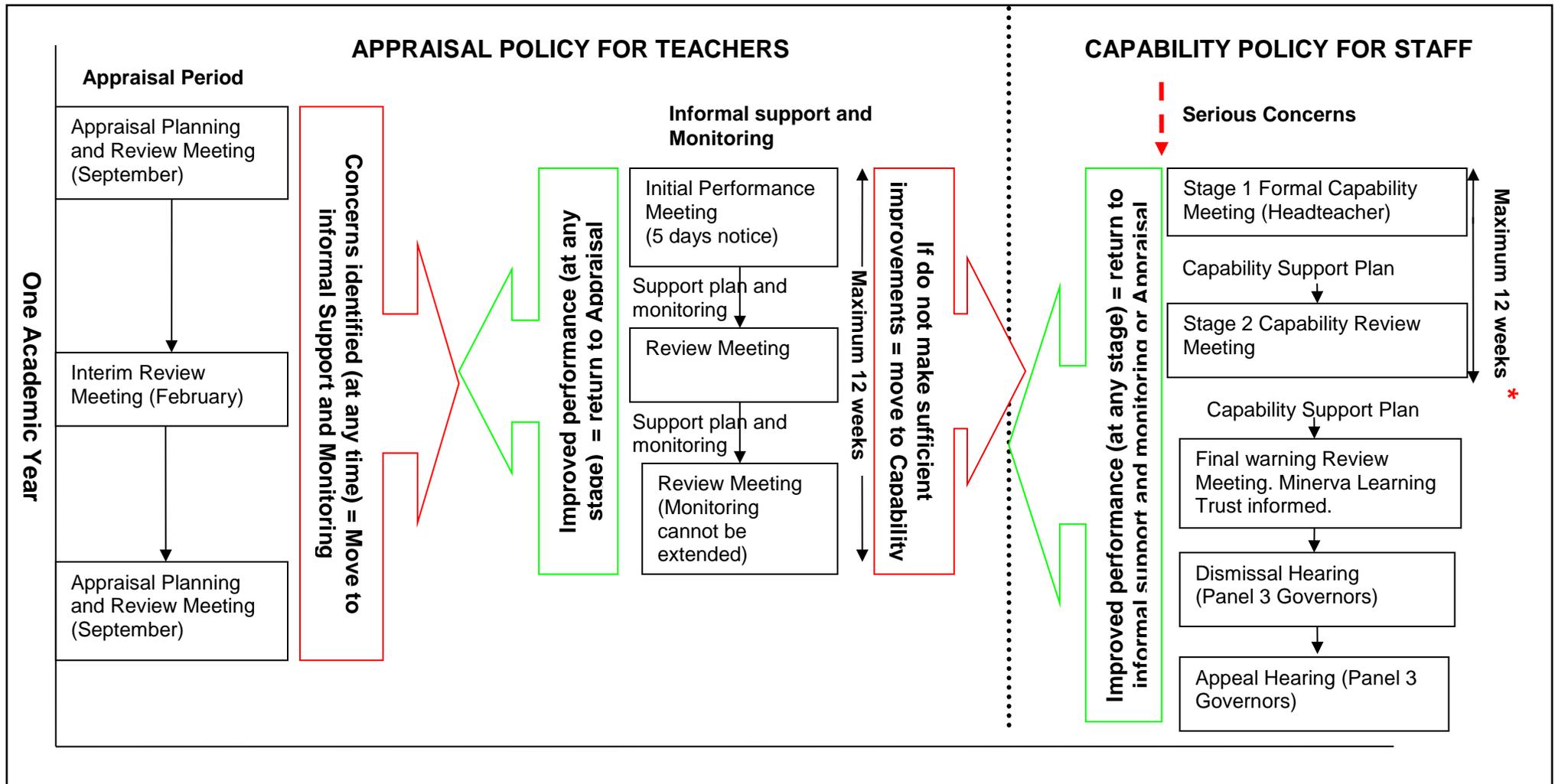
An employee may appeal against the decision to dismiss by writing to the Chair of Governors. The letter must specify the reasons for appeal. This request must be made within 5 clear working days of receipt of the decision of the Headteacher/Governing Body Dismissal Panel. The Appeal Panel of the Governing Body will seek to hear the appeal within 10 clear working days of receiving the request.

The decision will be confirmed in writing by the Appeal Panel within 3 clear working days of the Appeal Hearing.

### **5.3 Appeal Hearings**

The original management statement of case, and any written statement submitted by the employee at the Hearing, will be used at the appeal hearing. This should be available to the Headteacher/Manager/Governor(s) hearing the appeal wherever possible, at least 5 clear working days before the appeal hearing. No new evidence will normally be submitted unless it can be demonstrated this was not available at the original hearing.

# APPENDIX A: A FRAMEWORK FOR MANAGING PERFORMANCE MANAGEMENT



\* The maximum period of support following stage 1 of the capability procedure could be made up of one of the following combinations:

- a) 4 weeks + 4 weeks
- b) 8 weeks + 4 weeks
- c) 4 weeks + 8 weeks

# PROCEDURE FOR THE MANAGEMENT OF SICKNESS ABSENCE

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### **FACT and GUIDANCE SHEETS**

These information sheets summarise key aspects of the policy, procedures, staff responsibilities and key actions. All of them can be found on the intranet *All Staff Resources/Policies/Management of Sickness Absence*. Copies will be provided for staff as part of the school's induction package in the most appropriate format.

**FG1** Employee's Responsibilities

**FG2** Staff Notification of absences

**FG3** Managers' Responsibilities

**FG4** Return to Work: Discussion/meeting guidance

**FG5** Short Term Absence

**FG6** Long Term Absence

**FG7** Monitoring Periods

**FG8** Occupational Health Referral Process

**FG9** Phased Return to Work: purpose and arrangements.

**FG10** Making Reasonable Adjustments in the workplace: To address existing or new actual or potential health issues which do or could affect work performance.

**FG11** Case Conference: Purpose, planning and procedures.



**Stage 3b): DISMISSAL HEARING** Set up and inform employees in writing.

**Manager shall**

- a) Send management statement of Case 5 working days in advance
- b) Present the statement

**Headteacher/Governors' Panel shall**

- a) Listen to and consider evidence by employee and representative
- b) Decide whether to uphold the recommendation to dismiss
- c) If uphold recommendation to dismiss.
- d) Inform the Executive Officer of the Minerva Learning Trust

## **PROCEDURE FOR THE MANAGEMENT OF SICKNESS ABSENCE**

### **Preamble**

*The Minerva Learning Trust (MLT) asks all partner schools to adopt and use this policy unless a partner school and the Minerva Learning Trust have discussed and agreed alternative procedures that they both agree would better suit the partner school's particular circumstances.*

*Any reference in this policy to the Governing Body or the school relates to the independent governing bodies and schools of all Minerva Learning Trust partners. Partner schools and their respective Governing Bodies have full delegated powers from the Trust and have responsibility for the operational implementation of the policies and their associated procedures. They are encouraged to seek advice and support from Minerva Learning Trust on matters of policy and procedure in circumstances where decisions may potentially impact on the Trust as a whole, e.g. dismissing staff or making staff redundant. In such circumstances, at least one member of the relevant panel should be a member of the Trust.*

This is the school's policy for managing staff sickness absence to reduce sickness absence levels that disrupt children's education. It includes clear procedures for the monitoring of staff absences, for taking appropriate action, and for encouraging the promotion of good health. The policy and procedures apply to all school employees.

The Governing Body and Leadership Team will monitor sickness absence to ensure the general well-being of the School and good human resource management practice

During their working lives people may develop health problems that, whilst they continue, can reduce their effectiveness at work. It is recognised that this is one of the most difficult areas for Managers and Trade Union Representatives. The school will treat individual cases sympathetically when dealing with issues of sickness absence and in deciding on appropriate action, taking into account the circumstances of the individual at work and, if appropriate, at home. The school will also equally consider the potentially adverse impact on colleagues and the standards of education received by the pupils.

This policy is intended to provide a fair and consistent framework of good practice which will help managers to deal with the issues related to absences from work, and encourage attendance, by looking for solutions to underlying problems. It will be important to take account of the circumstances surrounding each individual case in deciding appropriate action and if managers are in any doubt, they should consult their Human Resources consultant for advice.

Health or any other physical or mental issues which are leading to problems with attendance should be dealt with under this procedure.

This procedure may be used where appropriate to manage health or any other physical or mental issues which are leading to performance problems.

Under the Equality Act (2010), management will make reasonable adjustments to allow employees who are disabled, or who become disabled, to continue their employment.

## AIMS

- a) To encourage and facilitate high staff attendance and minimise staff absence and thus avoid disruption to the provision of services and teaching, learning and pupil achievement.
- b) To clearly describe the school's positive management of absence and its expectations of individual responsibility and accountability for all staff at every level.
- c) To provide a fair, sensitive, informed and consistent framework of good practice
- d) To identify and address any factors in the workplace which may be affecting employee attendance.
- e) To make a positive contribution to the health and well-being of the workforce.
- f) To enhance service provision and reduce costs.

## PART ONE

### Introduction

The term '*manager*' is a generic term and refers to the most appropriate manager to implement this procedure. It could therefore mean a member of the school leadership team, including: Headteacher, Deputy Headteacher, Subject or Team Leader, Office Manager, Bursar or a member/members of the Governing Body .(See section 3 and 4 below and FG7).

References to 'Managers' means Managers or Headteacher as applicable, or Chair of Governors where the employee concerned is the Headteacher.

In some instances an employee may wish to speak to someone other than their own manager. This may be in cases where there is alleged harassment or issues specific to a particular gender or other protected characteristic under the Equality Act 2010. In these circumstances arrangements may be made for an alternative manager to manage this process.

The procedure deals with both the informal and the formal stages of managing the sickness absence of an employee that could result in the employee receiving one or more formal improvement notices or ultimately being dismissed from their post

Sickness absence may occur for the following reasons:

- a. Short term ill health, physical and/or mental
- b. Disability
- c. Long Term physical or mental Ill Health

If problems are identified at an early stage it will allow identification of appropriate solutions and arrangements whether these be:

- Use of this Management of Sickness Absence Procedure
- Consideration of compassionate leave or flexible working arrangements
- Use of any other appropriate Policies
- Making reasonable adjustments to the workplace, policies and procedures under the guidance of the Equality Act 2010

Specific Guidance on the application of this procedure in these circumstances is given in Part 3 of this document.

**When dealing with issues of job performance** *the Trust's Capability Procedures for Teachers and Support Staff – or an agreed alternative - should be used.*

**When dealing with matters relating to professional conduct** *the Trust's Disciplinary Procedure – or an agreed alternative - will be used.*

## Principles

- 2.1** The School has an obligation to take account of its general duty of care as an employer but it must also consider the effects of sickness absence on the quality and provision of education and on employees.
- 2.2** Regular attendance at work is part of the employee's contract of employment and if the employee is medically unfit to work or is unable to provide regular and efficient service to the satisfaction of the school then termination of employment may be considered.
- 2.3** The School recognises that employee sickness absence may be influenced by a number of factors. The School will offer reasonable assistance to its employees to resolve issues of absence. A range of appropriate options and outcomes may result from this.
- 2.4** It may not be reasonable or feasible, however, to sustain employment in all circumstances. Consequently, persistent unsatisfactory attendance may, after due consideration, lead to termination of employment.
- 2.5** Managers have both a right and obligation to meet with an employee when they have concerns about sickness absence. Similarly, employees have the right to raise with their manager concerns and problems which they believe may affect their attendance. *(See FG1 and FG3).*
- 2.6** Managers should determine if an employee's absence may be due to a disability and if so they should consider with the employee whether any reasonable adjustments may be made to assist that employee to return to work or reduce their absence levels. *(See FG10).*
- 2.7** Good attendance is valued and all opportunities should be taken to acknowledge and recognise it.
- 2.8** Managers will ensure that accurate records of absence will be established and maintained by the appropriate administrative staff and that patterns of absence will be monitored carefully. *(See FG3 and FG7).*
- 2.9** Managers will respond to attendance issues at the earliest opportunity and in a fair and consistent way whilst being sensitive towards peoples' circumstances.
- 2.10** Managers will consider a range of support and options available in determining appropriate outcomes taking advice accordingly.
- 2.11** Managers have the right to expect employees to attend an interview with the Occupational Health Service provider so that additional information can be gained to help manage the issues of sickness absence. *(See FG8).*
- 2.12** The School supports the right of a colleague to be represented and supported by their Trade Union or by an employee of the Minerva Learning Trust at all formal stages of this procedure.
- 2.13** The School will comply with the relevant statutory requirements relating to the management of sickness absence and will adhere to its internal policies and procedures.
- 2.14** The School will seek to ensure that sickness absence is not caused by failure to properly manage health and safety risks as required by legislation and the School's Safety, Health & Welfare Policy
- 2.15** Confidentiality of information will be maintained in relation to personal details and circumstances. Information to be shared with colleagues and others through agreement with the employee.
- 2.16** As good employment practice, the relevant manager will ensure the following have taken place:-
  - (a)** The employee has been informed of all health risks associated with their post.
  - (b)** The employee has received the appropriate induction to the job
  - (c)** The employee has been issued with an appropriate, up to date job description.
  - (d)** The employee has been told clearly what their roles and responsibilities are.
- 2.17** It should be recognised that the success of any arrangements to improve the attendance of an employee depends on the constructive co-operation of the employee concerned. To this end, employees will be expected to:-
  - accept and act upon the advice of managers to carry out reasonable directions which are designed to improve attendance
  - participate positively and constructively in discussions about her/his sickness absence and how it can be improved

The School will demonstrate a commitment to help the employee to overcome her/his problems and to make reasonable adjustments to working arrangements to facilitate consistent attendance. *(See FG10).*

- 2.18** Whilst it is important that these provisions are considered in order to ensure fairness and equity in the treatment of employees, it may be that ultimately formal action has to be taken. Therefore, the manager will reserve the right, after having previously provided agreed support, to consider recommending termination of employment to the Headteacher/Governors. This will be on the grounds of incapability for work due to the employee's sickness absence where problems persist and alternatives to dismissal, including early retirement on health grounds have been considered but are inappropriate or unavailable. In some cases it may be necessary for the Manager to move immediately to suspension and dismissal.
- 2.19** The procedure is designed to ensure that if an individual fails to improve her/his attendance, any subsequent action will be based upon:-
- Structured information gathering and systematic recording which demonstrates that an employee has an unacceptable sickness absence record
  - A fair procedure used to reach this conclusion
  - The fact that the employee was given reasonable assistance to overcome such failings
  - The employee, knowing the level of seriousness of the problem, being given clear written information on the nature of their absence problems with appropriate consideration and support at the earliest possible stage
  - The employee being given reasonable time to improve within the timescales given
- 2.20** The formal Management of Sickness Absence Procedure is described in stages of increasing seriousness to avoid ambiguity about the employee's position. It must be noted however, that some circumstances may be of such a serious nature that they will immediately need to be considered under the second or final stage in the formal procedure.
- 2.21** Prior to a review meeting taking place under this procedure, an employee should be informed in writing of the level at which the case is being considered. Where a manager departs from the usual practice of operating the procedure sequentially, that decision must be explained at the review meeting
- 2.22** If at any stage in the procedure the employee regards the steps being taken as unreasonable, she/he will have the opportunity to raise their concerns during relevant meetings, hearings or appeals, and by submitting a letter to their manager outlining their concerns. **The School's Grievance Procedure is not appropriate in these circumstances.**

## Roles and Expectations

### A. Managers/Headteachers/Chair of Governors (*See FG3 Manager's Responsibilities*)

Managers are expected to:

- 3.1** Be responsible for monitoring and recording the sickness absence of their team members on a day to day basis liaising with their LT Line Manager and administrative support staff as appropriate.
- 3.2** Inform all employees of attendance management procedures including the conditions of the sick pay scheme and/or refer them to the relevant LT Line Manager and/or Support Staff colleague.
- 3.3** Meet with all employees for a 'return to work interview' on the employee's return to work, **regardless of the duration of the sickness absence. (See FG4 for advice on The Return to Work Discussion.)**
- 3.4** Communicate regularly with their staff regarding any potential or actual issues which could affect well-being and attendance. In the normal course of their management/supervision of staff they will be expected to identify where a problem exists or may arise which impacts on an employee's attendance. They should take responsibility for managing and providing support in order to resolve the matter in the most appropriate way.
- 3.5** Meet with employees to discuss issues that they feel may affect their attendance at work as soon as these become apparent.

- 3.6** Discuss and agree any reasonable adjustments and support to prevent possible absence and/or facilitate a return to work and/or address issues that have led to absence. This may involve a referral to the school's Occupational Health service.
- 3.7** Liaise with the relevant LT Manager to maintain reasonable contact with employees during a period of absence.
- 3.8** To work with the relevant LT Line Manager to organise review meetings with employees when their sickness absence level has reached a trigger point (*See the summary diagram on p.5*).
- 3.9** For the relevant LT Line Manager to prepare "Review Statements" for Formal Review Meetings at Stage One and Stage Two, and Appeals
- 3.10** Prepare a 'Statement of Case' for Dismissal Hearings and Appeals at Stage 3
- 3.11** At stage 3 hearings the Headteacher could hear a case and make a decision to dismiss (*where he/she has not been previously involved in the management of the case*).

## **B. Employees (See FG1 Employee Responsibilities)**

Employees are expected to:

- 3.12** Make their manager aware of any health issues that may or does affect work performance.
- 3.13** Attend work when fit to do so.
- 3.14** Comply with the partner school's sickness reporting requirements. In the case of Handsworth Grange Community Sports College this would be to:
  - inform the designated person within the school by 8am *or arrange for a nominated relative or friend to do so*.
  - Provide specific details of the reasons for absence to the designated person in school (*currently Julie Davis*) who will record these on the school's *Self Certification form*. The form will be passed to the relevant Line Manager for the Return to Work interview where any missing details will be filled in prior to returning to Julie Davis. (See Section G and FG4).
  - Provide advice on the likely duration of the sickness absence.
  - *If possible* make or agree arrangements to contact their Line Manager using the most appropriate method.
  - *If at all possible advise the Line Manager and/or relevant others* on cover work and any other re-arrangements that may need to be made e.g. over meetings, visitors, professional tasks that need completing etc.
  - To obtain a medical certificate/Fit Note from a doctor *if the absence exceeds 5 working days* and ensure this is sent to the designated person in school as soon as possible.
  - In the event of being signed-off work ensure that they have the support of their doctor for returning to work and that a copy of any Fit Note deemed necessary is provided for the relevant school managers.
  - On return to work, ensure any details missing from the Self Certification form are completed. This would normally be done during a Return to Work interview with the relevant Line Manager. (**See FG4 Return to Work Discussion**).
- 3.15** Attend Return to Work Interviews with relevant Line Manager(s).
- 3.16** Maintain reasonable contact with the school and meet with appropriate school manager(s) when required during periods of absence of 4 weeks or more (*"long term sickness absence"*) or, if medically unable to maintain such contact, to make arrangements for an intermediary, e.g. trade union representative or family member, to maintain contact on their behalf. (*See FG6 Long Term Absence*).
- 3.17** Attend Occupational Health appointments if required.
- 3.18** Co-operate in resolving any issues.

## **C. Governors**

Governors are expected to:

- 3.19** Make fair and objective decisions on whether or not to dismiss employees where the Headteacher has presented a case for dismissal.
- 3.20** Determine whether appeals against Improvement Notices and dismissal will be upheld or not.
- 3.21** Notify the Minerva Learning Trust when there is a decision to dismiss an employee after the Hearing and before the appeal stage at Stage Three.

- 3.22** Notify the Minerva Learning Trust in writing if the Appeal Panel upholds the Appeal against dismissal  
in order that the dismissal notice can be withdrawn.

#### **D. Occupational Health Service Provider**

The school's Occupational Health Provider is expected to:

- 3.23** Consider Health Declaration Forms for new employees and advise on suitability for employment or reasonable adjustments  
**3.24** Review employees with health issues and offer guidance and support  
**3.25** Refer or advise the referral of individuals to agencies as appropriate eg. Access to Work, Counselling, Cognitive Behaviour Therapy  
**3.26** Provide managers with professional information regarding employees, maintaining confidentiality.

#### **E. Trade Unions**

Trades Union representatives are expected to:

- 3.27** Represent members at all stages of the procedure  
**3.28** Offer advice and support to members

#### **F. Human Resources Provider**

The Human Resources Provider is expected to:

- 3.29** Offer guidance and support to employees and managers  
**3.30** Offer guidance and support to Governors during Hearings/Appeals  
**3.31** Liaise where appropriate with Occupational Health and other agencies  
**3.32** Assist with seeking redeployment where appropriate

#### **Recruitment**

The school has agreed to support the Disability Symbol Scheme and will guarantee an interview to someone who is disabled but who meets all the selection criteria for the post.

Where health challenges exist in jobs or potentially do so, the school will ensure that guidance is provided to prospective employees at the recruitment stage so that candidates can make an informed choice about their suitability for the post.

The school should also be prepared to discuss any opportunity to make reasonable adjustments to enable an employee, or potential employee, to carry out the job as required by the school. *In the case of a new recruit, this should be after the recruitment process.*

The School will provide information to employees at induction stage about standards, procedures and arrangements for reporting sickness absence.

#### **Management Systems**

The School will ensure there is a documented and well publicised system for managing sickness absence which includes:-

- Trigger points that may lead to management action
- Monitoring and recording arrangements
- Sickness reporting requirements
- Support arrangements
- Manager's responsibilities

## Trigger Points

The following trigger points may lead to a Manager taking up a sickness absence concern at the informal level of the Management of Sickness Absence Procedure. Outcomes may vary depending on the circumstances of each case. These trigger points should be kept under review.

- (a) Any absence, mixture or pattern of absences that give cause for concern.
- (b) Short Term Absence (*See FG5*): **A:** 1-3 days; **B:** self-certified, or medically certified absence up to 4 weeks)
- (c) Following the third period of sickness absence in a term and/or 4 periods of sickness absence in the previous 12 months
- (d) Having a period of 15 days continuous absence in a 12 month rolling period.
- (e) Long term absence (*See FG6*): Following 4 weeks absence or where it is apparent that absence will extend beyond this.

**NB.** See Appendix 1 - Managers' Checklist - Using the Occupational Health Provider. Also **see FG8. Occupational Health Referral.**

## The Procedure in Brief

The following procedure is designed to ensure that issues of sickness absence are dealt with by managers promptly, thoroughly and equitably.

The School will provide, as appropriate and subject to available resources, at every stage of the procedure:-

- the practical and consistent application of support, advice and guidance to the employee by a professional approach
- the establishment of attendance criteria and monitoring of attendance against the criteria within pre-determined time periods.
- clear written information regarding the alleged shortcomings in the employee's attendance

The employee will be fully involved in the process by being invited to participate in discussions about her/his sickness absence and ways to reduce it, advised clearly on the specific areas of concern and made fully aware of the comments being made by those whose role it is to offer support and guidance. She/He will also be made fully aware of the stage which has been reached, her/his sickness absence at each stage, the timescale by which improvement is expected and the consequences of failure to improve to the required standards.

The detail of the procedure is contained in Part Three.

## PART TWO

### Scope

This procedure will be used where a manager has identified problems in an employee's attendance at work, which may be caused by:

- Physical or mental incapacity impacting on attendance
- Disability
- Long term ill health
- Ill health absence

### Application

**2.1** This procedure will apply to all employees of the Minerva Learning Trust.

The manager taking responsibility for the case under this procedure will continue to manage the process up to the point where dismissal is to be considered. If the Headteacher has been given delegated responsibility to dismiss then the Headteacher can make the initial decision to dismiss (*IDD*) rather than a Panel of Governors.

**2.2** If at any time during the procedure the employee improves her/his attendance to the standard required, she/he should be informed of this in writing. If a lapse does occur, the matter may be taken up again at the same stage in the process, or a lower stage, as appropriate.

**2.3** The manager will specify timescales (*for review and improvement*) throughout the procedure that are relevant and appropriate to the circumstances of the case in order to manage the problem within a reasonable period of time.

**2.4** Employees will be advised of their right to be accompanied by a Trade Union representative or an employee of the Minerva Learning Trust at all stages of the procedure. The process will not be unreasonably delayed to accommodate representation.

**2.5** Throughout the process, guidance/advice will be available to the manager from the relevant Human Resources consultancy and Occupational Health Providers. If a decision is made to refer an employee to Occupational Health, they should be advised of this and the reasons for it, to avoid anxiety and to ensure attendance. (*See FG8*).

**2.6** In some circumstances it may be reasonable to bypass a stage or stages in the procedure.

**2.7** Formal Improvement Notices/confirmation of resolution of problems will be stored on the employee's personal file.

## Legal Framework

The Employment Rights Act 1996 confirms that dismissal for ill health/sickness is a potentially fair reason for dismissal as it relates to an employee's capability to do the job.

The Education (Health Standards) (England) Regulations 2003 state that specified relevant activities ( i.e. related to teaching and working with children) can only be undertaken by persons with the health and physical capacity to do so.

The Conditions of Service for School Teachers in England and Wales (Burgundy Book) lays out entitlements to sick pay allowances for teachers.

The National Joint Council for Local Government Services - National Agreement on Pay and Conditions of Service (Green Book) lays out the entitlements to sick pay allowances for Support Staff.

Employees will be entitled to the relevant conditions of service for their employee group.

**However, the above sick pay provisions are maximum entitlements that do not prevent action being taken under the Sickness Absence Management Procedure before the expiry of these entitlements.**

**1.1 Long Term Sickness (*a period of four weeks or more of continuous absence – see FG6 Long Term Absence*).**

Long term sickness procedures will include:

- Adequate consultation with the employee
- Adequate medical investigation
- Consideration, where appropriate, of alternative employment/job adjustment

In relation to medical investigation the manager will avail him/herself of all relevant facts that could reasonably be known at the time in order to be able to make an informed decision.

If an employee refuses to consent to a medical referral or examination, the manager is entitled to base their decision on the relevant facts available even if these facts are insufficient to give the full medical position. Where an employee's health is such that they will not be able to return to work in the foreseeable future, consideration will be given to bypassing stages of the procedure, and it may be reasonable to move straight to the third and final stage.

### **3.2 Persistent Short Term Sickness Absences**

In many cases of short term sickness absence, a formal medical investigation may not provide conclusive information because of the transient nature of complaints and symptoms. However, a fair procedure is still important and will take into consideration the attendance record and reasons for absence. Any dismissal should take into account:

- the nature of the illnesses
- the likelihood of recurrence or other illness arising
- the length of absences and spaces of good health between, and indications for the future
- the impact of absence on other employees, the pupils' learning and the school's reputation
- the consistency in the treatment of staff

Managers need to demonstrate fairness, reasonableness and consider all the circumstances of a case.

### **3.3 Fit Notes**

Under the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence (Amendment) Regulations 2010 "fit notes" (or fitness for work statements) have been introduced to replace the old sick notes.

The aim of these statements signed by doctors are to encourage employees who are absent from work due to sickness back to work more quickly. These notes focus on what work an employee *can do* rather than what they cannot do.

The GP will advise in the note that an employee is either:

- Not fit for work

***Or***

- May be fit for work taking into account the advice provided. The GP should suggest ways of helping an employee back to work and what types of adjustment need to be considered.

The aim is to provide greater flexibility in the management of sickness absence.

Whilst the school is not bound to follow the GP's advice and could use the statement as if it was a not fit to work recommendation, the school will whenever such a statement is provided:

- Consider carefully all the advice provided by a GP
- Meet with the employee and their trade union representative to discuss the advice and the way forward.

### **3.4 Disability Discrimination legislation and the Equality Act 2010:**

This act has unified all anti-discrimination laws into a single equality act. Managers need to be aware of all the implications of this act in terms of ensuring that all of the nine protected characteristics listed are taken into account in all areas and aspects of the school including the management of sickness absence. It is

unlawful for an employer to treat anyone who can be listed under one or more of the nine characteristics less favourably than anyone else. Furthermore, schools are obliged to consider all options for ensuring they are as inclusive as possible. For example, it is unlawful for an employer to treat a disabled person who suffers a disability less favourably than someone else because of their disability. This applies to employees who have a disability when they are appointed and employees who develop a disability during their employment. The legislation also requires an employer to remove disabling barriers by making 'reasonable adjustments' where possible.

Managers will also need to be aware of the requirements of Disability Discrimination/ Equality Act legislation. This legislation makes it is unlawful for an employer to treat a disabled person who suffers a disability less favourably than someone else because of their disability. This applies to employees who have a disability when they are appointed and employees who develop a disability during their employment. The legislation also requires an employer to remove disabling barriers by making 'reasonable adjustments' where possible.

### 3.5 Education legislation

In line with the Education legislation, the Headteacher or other delegated manager can issue Improvement Notices to employees at the end of First and Second stage review meetings. The Headteacher can also be given delegated responsibility to make an *initial dismissal decision* (IDD) at Stage 3. However, there will be circumstances when the Governors will make the IDD. These include:-

- Where there are allegations against the Head by the employee
- Where the Head has had prior involvement in the case
- Where the Head has carried out the investigation
- Where the Head is subject to an investigation

## PART THREE

### The Management of the Sickness Absence Procedure:

The procedure consists of the following sections:-

A	Identification, Support, Monitoring and Evaluation	H	Management Intervention Prior to Entry into the Formal Stages of the Procedure
B	Trade Union Representation	I	The Formal Stages of the Management of Absence Procedure
C	The Composition of Panels for Stage 3 Hearings and Appeals	J	Suspension from Duty
D	Appeal Rights	K	Options Available
E	Records	L	Sources of Assistance
F	Prolonged/potential ill Health, Physical and/or Mental illness	M	Important Notes to Consider when Planning Timetables for Managing the Formal Stages of the Sickness Absence Procedure
G	Return to Work Interviews		

## SECTION A

### Identification, Support, Monitoring and Evaluation

It is important that sickness absence problems are clearly identified and given appropriate consideration and support at the earliest possible stage. Managers should monitor attendance on an on-going day-to-day

basis and take action in line with this policy when an employee is absent from work. Managers need to undertake *Return to Work* discussions every time an employee returns from sickness absence, *within five working days* of the employee's return to work. **(See Section G and FG4 Return to Work Discussion).**

The nature of the problem, its level of seriousness and cause(s) will be investigated and identified by structured information gathering and systematic recording using the HGCSG Self-Certification Form. The outcome of the *Return to Work* meeting will be discussed with the appropriate Leadership Team manager. If a sickness absence trigger point has been breached the Leadership Team may decide to hold a more formal meeting, still at the informal stage, to discuss the issues. The Manager may still be involved at this point **(See Section H).**

Following a specified period of support, monitoring and evaluation the next decision will be to assess the outcome. In the event that the employee has failed to satisfy the attendance standards set it may be necessary to enter the formal stages of the procedure. This process will be led by an appropriate member of the Leadership Team. **See Section I.**

## **SECTION B**

### **Trade Union Representation**

Representation by relevant, recognised Trade Unions will be encouraged. An employee has the right to be accompanied by her/his Trade Union or an employee of the Minerva Learning Trust, at every stage of the procedure, including the informal stage. Each employee will be informed of this right throughout the procedure.

Details of any actions previously taken or now possible will be given in writing to the employee's representative if the employee so desires.

No action should take place with regard to any employee who is a recognised representative of a Trade Union until, following notification to the employee, the circumstances of her/his case have been discussed with a full-time official or other appropriate official of the employee's Trade Union. Should the employee not wish her/his Trade Union official to be involved the procedure will be followed normally.

## **SECTION C**

### **Formal Review Meetings At Stage One And Two**

At stages one and two in the procedure, the manager or Headteacher can issue a warning at the end of the review meeting. **(See also FG3: Managers' Responsibilities).**

### **The Composition of Panels for Formal Stage 3 Dismissal Hearings and Appeals at all Stages**

In accordance with relevant Education legislation, Governing Bodies of delegated Schools must appoint two separate sub-committees of not less than three governors each to consider cases at the third and final stage when dismissal of an employee is being considered. Where this number is not reasonably practicable it can be reduced to two. There should not be fewer governors on the appeal panel than were on the original panel.

In the interests of natural justice these sub-committees must comprise different governors. These governors will not be employees of this school.

Governors will delegate the responsibility for dismissals to the Headteacher in appropriate cases. *(see 'Roles and Responsibilities' – managers/Headteachers/governors on page 9)*

For appeals at Stages 1 and 2 of the procedure, normally one Governor will hear the case.

A Human Resources Adviser will be present to advise the Panel and manager/governor at the formal hearings and appeals.

The Minerva Learning Trust must be informed of any Stage 3 hearings and appeals and be invited to comment.

## **SECTION D**

### **APPEAL RIGHTS**

Normally one Governor will hear appeals at Stages 1 and 2 of the procedure

A panel of 3 Governors will hear appeals at Stage 3 of the procedure.

The panel can be reduced to two members where it is not reasonably practicable to have three members or where there were 2 members on the original panel

In the case of dismissals notice periods are effective from the initial dismissal decision (IDD) and not from after an Appeal Hearing.

In order to register an appeal the employee will need to write to the Headteacher or Chair of Governors as appropriate within five working days of the review meeting/hearing and will need to specify the reasons for appeal

Where instructed to do so by the Headteacher or Chair of Governors the Minerva Learning Trust will give notice of dismissal within 14 days of receiving the IDD (initial dismissal decision)

If the panel upholds the appeal, the Chair must inform the Minerva Learning Trust in order that the dismissal notice is withdrawn.

Appeals should normally be restricted to:-

- the reasonableness of the decision
- any relevant new evidence
- procedural irregularities

An Appeal against dismissal will be a rehearing and no new evidence will be presented unless agreed and presented in advance.

The procedure to be adopted for the above are appended at the end of this Document.

## **SECTION E**

### **RECORDS**

Improvement Notices issued at formal stages of the Procedure will be recorded on the employee's personal file. Throughout the procedure an employee will be supplied with copies of any reports prepared and these, with their agreement, will also be supplied to their chosen representative. A written record should be kept of the employee's attendance and a copy of the record handed to the employee at the end of the period of monitoring.

## **SECTION F**

### **ILL HEALTH, PHYSICAL AND/OR MENTAL**

#### **PROLONGED ABSENCE**

If an employee is absent, or is likely to be absent, for a prolonged period, the Manager should make contact with the employee so that expectations for a return to work can be assessed. This contact could be via a relevant third party if this is more appropriate. The aim is to give support to the employee, and to gather information about the employee's medical situation. Any third party should pass on relevant information to the Manager.

Every attempt should be made to seek suitable arrangements with the employee to facilitate some kind of return to work. This should be done in conjunction with advice from Occupational Health and Human Resources providers. **(See FG8 Occupational Health Referral and FG9 Phased Return to Work).**

The case will then be reviewed. In the light of information gathered, the following options could be considered following advice received:

### **Short Term Measures (subject to affordability and appropriateness)**

1. A phased return to work and/or temporary reduction in duties. **(See FG9 Phased Return to Work, and FG10 Reasonable Adjustments).**
2. A temporary reduction in hours and/or responsibility points/grade following the phased return to work (with a corresponding reduction in salary)
3. Reasonable adjustments under the Equality Act 2010.

### **Long Term Measures**

1. Reasonable adjustments in relation to the demands and expectations of the 2010 Equality Act
2. Permanent reduction in hours
3. Permanent reduction in hours and 'Stepping Down' from a post of responsibility (teachers) at no cost to the school or the Minerva Learning Trust.
4. Transfer to a post of less responsibility, if such a post is available
5. Application for Ill Health retirement benefits

If the above options are not viable or have been tried but found to be unsuccessful, then the Manager may recommend to the Headteacher/Governing Body and the Minerva Learning Trust, the termination of employment with the appropriate contractual notice pay. The employee will have a right to a Hearing and an Appeal as specified above, and a right to representation by a Trade Union Representative or employee of the Minerva Learning Trust at both, before a decision to dismiss is taken

### **Frequent Short Term Absences**

If an employee is frequently or persistently absent for health reasons, the absences will be investigated promptly to ascertain whether there are any underlying medical reasons for the absences and to secure, where possible, the improvement in attendance to the required standard. The employee should be referred to the school's Occupational Health Provider, and this procedure used appropriately, unless there are no underlying medical reasons for the absences, in which case the use of the School's Disciplinary Procedure may be considered. Alternatively, managers should consider the other solutions and/or arrangements suggested in the Introduction to this document.

## **SECTION G**

### **Return to Work Interviews (See FG4 Return to Work Discussion)**

It is important that managers recognise the importance of 'Return to Work' discussions in resolving problems of sickness absence from work. The degree of formality and length of the interviews will depend on the individual circumstances e.g. in the case of an employee who is rarely off sick the discussion will be brief and more in the nature of a welcome back to work and a check that notification of absence and other procedures have been properly implemented. In the case of an employee returning to work after a succession of frequent intermittent absences or after a long term absence and maybe in need of support, the discussion should be more detailed.

This Return to Work discussion, should take place within 5 working days of the employee's first day of return and ideally on the first day of the return. It should be supportive and sensitive, but should also emphasise the point that the period of absence, no matter how brief, has been noted. The discussion provides the opportunity to discuss:-

- a) The reason for sickness absence and how the individual is feeling

- b) If there are any specific problems
- c) A review of the sickness absence period
- d) If the employee has followed procedures for reporting absence
- e) Reminder of previous sickness absence (*if applicable*)
- f) The importance of regular attendance at work
- g) Anything that they have missed whilst on sick leave
- h) Action, including support, and time scales (where applicable)
- i) Updating/completion of the provided school's Self- Certification Form.

A written record of the meeting should be completed and shared as appropriate using *the provided Return to Work discussion proforma (See FG4 Return to Work Discussion)*.

## SECTION H

### The Informal Stages of the Management of Sickness Absence Procedure

#### Management Intervention Prior to Entry into the Formal Stages of the Procedure

- a) Before entering into the formal stages of the procedure, managers have the right and the duty to bring matters of concern to an employee's attention. When it appears that an employee is not meeting the required standard they will be required to attend a meeting with the designated Leadership Team Line Manager. If appropriate, the frontline or immediate Line Manager and Leadership Team Line Manager may work in tandem. (*See Appendix 3 for the suggested format. Also see FG3 Managers' Responsibility AND FG4 Return to Work Discussion*).
- b) The objective of the meeting is to draw to the attention of the individual the way in which their sickness absence is alleged to be deficient and to:-
  - Have investigated to provide information/evidence to put to the employee
  - Confirm the status of the meeting
  - Make the employee aware in specific terms of the standards expected and the shortfall
  - Give the employee an opportunity to respond and consider the response
  - Confirm any support to assist/resolve the problem
  - Seek medical advice, via Occupational Health where a manager believes a health issue is affecting attendance. (*See FG8 Occupational Health*).
  - Assess the seriousness of the problem which exists
  - Confirm a time period over which monitoring will take place (*See FG7 Monitoring Period*).
  - Note and confirm the discussion outcomes and the review date

Where the manager considers that the matter is resolved, or can be managed within the informal stage, the manager will confirm this in writing to the employee but continue to monitor sickness absence to avoid future problems.

An appropriate support programme shall be arranged and the employee will be given a reasonable period of time in which to show acceptable improvement. The period of time given to the employee to improve their sickness absence will reflect the seriousness of the concern and in extreme cases will be short. The employee will be informed that their subsequent sickness absence will be monitored. A date for a review of the employee's sickness absence will be clearly specified as part of the programme of action determined. The employee will be notified of the period of time in which improvement is expected and advised of the consequences of a failure to improve.

Where improvement is not adequate at the end of the specified period the employee will be requested in writing to attend a formal review with the manager to discuss the case. The outcome of this meeting may be that the Manager decides to issue a Formal Improvement Notice at Stage 1 or 2 of the Procedure.

In the case of long term ill health/sickness, where it is evident that the matter cannot be resolved by informal support, the manager may move to the appropriate stage of the Formal Procedure.

Following a failed application for ill health retirement, depending on the circumstances of the case, and if all other options have been explored and found to be unsuitable, then it will be appropriate to move straight to Stage 3 of the Procedure (*i.e. where dismissal will be considered*). The Minerva Learning Trust must be informed at this stage and be provided with the opportunity to comment.

## **SECTION I**

### **The Formal Stages of the Management of Sickness Absence Procedure**

#### **Timetable for Teachers**

When a teacher has been entered into the Formal Stages of the Procedure a timetable will need to be determined which will include the dates for all possible Hearings, Appeals and notice periods. This is because of conditions of service relating to resignation/termination dates. **(See Appendix 3)**

#### **Timetable for Support Staff**

There are no equivalent conditions of service relating to resignation/termination dates for support staff. However, there are conditions of service and legal entitlements relating to notice periods which will be followed.

#### **Formal Review Meetings (See FG5 Short Term Absence and FG6 Long Term Absence)**

The purpose of these meetings, which are pre-planned, is to assess progress against the targets set at the informal stage of the Procedure, or following formal Improvement Notices. The manager will share and discuss appropriate information/evidence at these meetings. Dependent upon the circumstances the outcome could be:

- Confirmation that a first/second formal Improvement Notice is to be issued
- Confirmation of a Stage 3 dismissal hearing with the Headteacher/Panel of Governors with reference to the Minerva Learning Trust
- Confirmation of a further monitoring period
- Confirmation that the matter is resolved/concluded

### **First Formal Stage**

Where, at the end of a formal Review meeting (normally following a period of informal management intervention) any of the following circumstances exist:-

- 1** A failure by the employee to improve after earlier management pre-formal intervention
- 2** Continued unsatisfactory attendance
- 3** A level of absence which is causing such concern that the Manager assesses it needs to be dealt with immediately within the formal procedure

A first formal improvement notice will be issued by the manager. *(See Appendix 4 for suggested format)*

At least 5 working days' notice of the review meeting should be given, in writing, and a 'Management Review Statement' sent to the employee. This is the evidence that the Manager will consider at the Review meeting to support their case. This should also be copied to the employee's Trade Union or other Representative. The Manager may call witnesses to support their case.

The employee will then have the opportunity to challenge facts or evidence and will have the opportunity to submit their own facts or evidence for consideration, and to call witnesses to support their case.

The decision will be sent to the employee in writing within 3 working days. The Stage 1 improvement notice letter will confirm:

- the nature of the concerns over how current attendance fails to meet the required standards, and the improvements expected
- details of the support programme and any additional training or other support that will be provided in order to help the employee meet the standard required
- the time period in which to achieve the standard required, how this will be monitored, the criteria to be used, and the date at which a review will take place
- the consequences of continued failure to meet the required standard
- the employee's appeal rights as detailed in this procedure at Section D

If the manager believes that the employee's attendance has improved to the required standard, they will confirm this in writing. The employee will then revert to the monitoring to which all employees are subjected.

## **Second Formal Stage**

An employee will be required to attend a formal review meeting at the second stage of the Procedure in any of the following circumstances:

1. If after the defined review or monitoring period, following a Stage 1 Improvement Notice, there is a continued failure to improve attendance
2. If a manager assesses that a case is so serious they will commence the formal stage of the procedure at Stage 2.

Where at the end of the Review meeting either of the above circumstances exists, a second formal Improvement Notice will be issued by the manager. *(See Appendix 4 for suggested format).*

A Management Review Statement will be required in both of the above circumstances. Please refer to the First Formal Stage above for details.

This further and/or Stage 2 formal Improvement Notice specifying the above will be confirmed in writing within 3 working days of the review meeting. The employee must also be advised at this stage, in writing, that continued failure to attain the standards expected may lead to a third and final review meeting. The outcome of this could be that the employee will be required to attend a Hearing where the termination of the employee's employment will be considered.

If redeployment is agreed by the Head/Governors as a possible solution, opportunities will be explored by the employee, manager and Human Resources accordingly. *(See Section L).*

If the Manager believes that the employee's attendance has improved to the required standard, he/she will confirm this in writing. The employee will then revert to the monitoring to which all employees are subjected.

### Third and Final Stage

An employee will be required to attend a formal review meeting at the third and final stage of the Procedure in either of the following circumstances:

1. Continued unsatisfactory attendance within the time specified at Stage 2,

**OR**

- 2 Where a manager assesses that a case is so serious and concludes that an employee is not capable of improving their attendance to the required standard and so recommends that the dismissal of an employee be considered by the Headteacher/Governing Body. At any such Hearing the Minerva Learning Trust is entitled to be represented to offer advice to the Headteacher/Governing Body,

Following this final review meeting, the employee will be suspended (*unless already on long term sickness absence*) and a Stage 3 Hearing will be arranged by the manager to which the employee will be invited formally in writing. The letter will advise that dismissal is a possibility and will remind the employee of her/his right of representation. (*See Appendix 4 for suggested format*).

The manager will share with the employee and Headteacher/Governors panel, 5 clear working days in advance of the Hearing, a written management case detailing the nature of the sickness absence concerns in respect of the employee, along with any documentary evidence to be presented at the Hearing.

Similarly, the employee (or employee's representative) will share with the manager and Headteacher/Governors panel, at least one working day in advance of the Hearing, a written case along with documentary evidence to be presented at the Hearing.

At the Hearing the manager will present the sickness absence case to the Headteacher/Governors panel, including the detail of unsatisfactory attendance, the evidence upon which this is based and the action taken to encourage improvement and manage the matter, including any previous formal warnings or improvement notices (*where relevant*).

The employee will have the opportunity to challenge facts or evidence.

Following an adjournment to give full consideration of the evidence presented, the Headteacher/Chair of the Panel will give her/his decision.

The result of a Hearing at which dismissal has been considered must be confirmed to the employee in writing within 3 working days of date of the Hearing. If the decision is to dismiss, the employee must be informed in writing of the right to appeal to the Governing Body. The decision to dismiss must be communicated to the Minerva Learning Trust after the outcome of the Hearing (and not the appeal) has been confirmed.

The Minerva Learning Trust Executive Body will issue the dismissal notice within 14 days of receiving the IDD. All dismissal letters must give the employee appropriate contractual or statutory notice (whichever is the longer), specify the reasons for dismissal and notify the employee of her/his right of appeal to an Employment Tribunal, mentioning the specific time limits.

Full pay in lieu of notice may be offered when an employee is dismissed on grounds of ill health absence. Offering payment in lieu of notice to an employee will have to be justified by the manager presenting the case. Pay in lieu **is not** a contractual right and needs to be mutually agreed by both the school manager and the employee concerned.

If payment in lieu of notice is not agreed by all parties, an employee who is dismissed on grounds of ill health absence will remain on suspension (if suspended) from their duties whilst serving their period of notice.

Dismissal on the grounds of ill health will not guarantee access to any occupational pension benefits.

## **Resignations**

An employee may reach a voluntary decision to resign at any stage of the Procedure. The manager will have a duty to reflect on the circumstances under which the employee resigned in any reference requested, including the sickness absence record.

## **SECTION J**

**Suspension From Duty** (Suspension should not take place if the employee is on long term sick leave).

1. Where investigation and consideration of the evidence by a manager results in a decision that the employee's continued presence in the school is either a risk to their own health and safety, or a risk to the pupil's health and safety, the employee may be suspended from duty on medical grounds on full pay to allow proper consideration by the manager of how to deal with the employee.
2. Following an agreed period of monitoring, suspension from duty will take place where it is decided, with reference to the Minerva Learning Trust, that an employee's sickness absence is so severe that she/he will be required to attend a Stage 3 Dismissal Hearing at the Final stage of the Procedure.

## **SECTION K**

### **Options Available**

At any stage within the procedure, the manager managing the sickness absence of the employee may wish to give consideration to the options available to enable them to resolve the issues presented.

Using the information gathered, it may be appropriate in some cases to consider the following:-

1. Re-training and/or help from a skilled worker
2. Medical examination
3. Any other appropriate counselling or advice
4. Job re-design or other changes to working arrangements e.g. re-deployment.

***See also Section F - Short and Long Term Measures for prolonged sickness absence***

## **SECTION L**

### **Sources of Assistance**

In Primary Schools the Headteacher and Deputy Headteacher will normally be involved in the process of assistance and review. However, in the smaller Primary School this may only be the responsibility of the Headteacher

The Headteacher, Deputy Headteacher, Assistant Headteachers, Business Manager and Subject Leaders will normally be involved in the process of assistance and review.

The manager in the case of the Headteacher will be the Chair of Governors or another appropriate member of the Governing Body.

In all cases the School may also request assistance from the relevant Human Resources consultancy and/or Occupational Health provider and the Minerva Learning Trust..

## **Section M**

### **Re-deployment**

Redeployment will not be used as a means of passing an employee's sickness absence problem from one school to another. Redeployment will only be considered where the available evidence suggests an employee's attendance will improve to a satisfactory level if they move to another post.

There can be no guarantee of redeployment under this procedure. Where it is appropriate, and if suitable posts are available within the Minerva Learning Trust, redeployment to an alternative post more suited to an employee will be considered.

## **SECTION N**

### **Important Notes to Consider when Planning Timetables for Managing the Formal Stages of the Sickness Absence Procedure**

- 1.** Normally it is advisable to avoid arranging Hearings and Appeals for holiday periods and it will not be possible to monitor employees during holidays. However, depending on the circumstances of the case, it may be possible by agreement to hold Hearings and Appeals in school holiday periods.
- 2.** Where there is absence due to sickness of the employee who is causing concern, or of any relevant manager/witness, it may be necessary to reschedule the timetable to allow for their recovery. Where a recovery within a short timescale is unlikely then it will be reasonable to continue with the formal stages of the procedure.
- 3.** If it is assessed that an employee should be dismissed please note carefully the notice entitlements of these employees (*see appendix 3*). Any dismissal must comply with contractual or statutory notice periods as applicable



**Approved by**

**Governor:** ..... **Date:** .....

**Signature:** .....