

St John's Catholic Junior School

"Love one another as I have loved you."

Attendance Management (Capability) Policy



Please read this document in conjunction with the Management of Attendance Operational Guidance and Appendices.

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Attendance Management (Capability) Policy

1. Policy Statement

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

The Attendance Management (Capability) Procedure provides advice and guidance on dealing with absence through an informal or formal process. The procedure also outlines the sickness absence trigger points for short term or persistent absence, long term and other absence issues and highlights some of the main causes of absence and provides practical information on managing sickness absence effectively.

Sickness absence management does not aim to prohibit sickness absence but to achieve improved employee attendance at school. The key objectives are:

- a) To establish proper management systems for reviewing individual sickness records.
- b) To review compliance with sickness reporting rules and conditions.
- c) To identify causes of sickness absence in order to prevent or deter absence recurring where possible.

2. Sick leave and pay (contractual requirements)

2.1 Teachers

Provided the appropriate conditions are met, a teacher absent from duty because of illness (which includes injury or other disability) shall be entitled to receive, in any one-year, sick pay as follows:

Length of continuous service	Sick Pay Entitlement
During 1st year of service	full pay for 25 working days, and after completing 4 calendar months' service, half pay for 50 working days
During 2nd year of service	full pay for 50 working days and then half pay for 50 working days
During 3rd year of service	full pay for 75 working days and half pay for 75 working days
During 4th and subsequent years	full pay for 100 working days and half pay for 100 working days

For the purpose of the sick pay scheme, 'service' includes all aggregated teaching service with one or more local education authorities.

2.2 School support staff

Employees are entitled to receive sick pay for the following periods:

Length of continuous service	Sick Pay Entitlement
During 1st year of service	1 month's full pay, and after completing 4 months' service, 2 months' half pay
During 2nd year of service	2 months' full pay and 2 months' half pay
During 3rd year of service	4 months' full pay and 4 months' half pay
During 4th and 5th year of service	5 months' full pay and 5 months' half pay
After 5 years' service	6 months' full pay and 6 months' half pay

Authorities shall have discretion to extend the period of sick pay in exceptional cases.

For the purpose of the sick pay scheme, 'service' includes all aggregated service with one or more local education authorities and academies.

In exceptional circumstances, the school may consider extending sick pay provision. You should contact your HR consultancy adviser to discuss before making the final decision.

Attendance Management (Capability) Procedure

3. Purpose

The purpose of the Attendance Management (Capability) Procedure

- a) To meet statutory obligations and the school's aim of ensuring fair and effective management of sickness.
- b) To enable expected standards of attendance to be specified and monitored fairly and effectively.
- c) To establish arrangements for dealing with sickness absence which comply with statutory requirements and good practice.
- d) To ensure all arrangements for managing sickness absence are conducted fairly and consistently without bias in relation to age, disability, ethnicity, sex, religion or belief, or sexual orientation.
- e) To ensure that employees' sickness records are regularly reviewed, and action taken to reduce absence where practicable.
- f) To ensure that employees are clear about the standards of attendance required of them, the time scales over which these are to be achieved and the management for monitoring and review.

- g) To ensure the school encourages and promotes appropriate support and assistance to employees who need to improve their attendance.
- h) To ensure appropriate HR and Occupational Health advice is obtained.

4. Roles and Responsibilities

4.1 Role of the Headteacher (or another relevant senior manager)

- a) To ensure that all staff are made aware of the attendance management policy and procedure and the operational guidance.
- b) Responsible for the management of sickness absence of all school employees including implementing controls and ensuring consistency in respect of sickness absence.
- c) To ensure levels of attendance are monitored, individual sickness is monitored.
- d) Confidential records of sickness are kept, and the employee concerned has reasonable access to them.
- e) To report annually to the Governing Body about school sickness absence statistics and the effectiveness of the school's absence capability procedure, ensuring confidentiality of employees.
- f) To identify any problems and assist in meeting targets for levels of attendance.
- g) To inform the employee of any meeting dates and where the date is changed a further notification should be sent.
- h) To be responsible for ensuring notes of welfare meeting are produced and a copy given to the employee.
- i) Ensure 'return to work' interviews are conducted after each period of absence.
- j) To discuss sickness absences with employees and to set standards for improvement, where appropriate.
- k) To seek advice from your occupational health provider, with support where appropriate from your HR Provider.
- l) To maintain contact and undertake welfare meetings with employee who are absent due to sickness.
- m) To consider reasonable adjustments in the case of an employee with a disability and/or redeployment and/or change to existing duties.
- n) To consider any mitigating circumstances, eg personal problems.
- o) To ensure all employees are aware of their responsibilities, when reporting sickness absence and consequences for not reporting sickness absence appropriately.

- p) To notify employees, when not adhering to reporting procedures, including consideration of suspension of pay and or disciplinary action (please seek advice from your HR provider).
- q) To ensure that there is regular contact with the employee who is absent due to sickness.
- r) To ensure all employees are aware of trigger points for the investigation of sickness absence.
- s) To treat all employees with sympathy, compassion and understanding.
- t) To consider any recommendations on the 'Fit Note' from a GP.

4.2 Role of the employee

- a) To attend "return to work" interviews where requested.
- b) To follow the procedure about notification of absences and producing medical certificates (Fit Notes).
- c) To attend appointment(s) arranged with an occupational health practitioner, if required.
- d) To participate in welfare meetings arranged during sickness absence.
- e) Attend meetings arranged under the sickness absence management procedure.

4.3 Role of TU representative and work colleague

A Professional Association, Trade Union representative will offer support to employees who are members through the attendance capability process, including representing employees at relevant formal meetings. If an employee is not a member of a trade union or professional association, they can be supported by a work colleague.

4.4 Role of the Governing Body

- a) To adopt the Attendance Management (Capability) Procedure and Operational Guidance.
- b) To regularly consider school sickness absence statistics at Governing Body meetings.
- c) The Chair of Governors is responsible for management of sickness absence of the Headteacher.

NB It is advised that the Chair of Governors of maintained schools should inform the Director of Children's Services of Headteacher's absences of ten days or more; the Chair of Governors will be advised by the Director of

Children's Services (or his nominated officer) as to the appropriate course of action.

- d) Members of the Staff Dismissals Committee and Staff Appeals Committee will make decisions on appropriate action for sickness absence cases.

4.5 Role of HR Consultancy Adviser

- a) Will advise the Headteacher and/or Governing Body on matters concerning sickness absence.
- b) Will provide a point of contact for the schools, teachers' professional associations and trade unions for sickness absence.
- c) Will undertake training as appropriate for the Headteacher and Governors on matters relating to sickness absence.
- d) Will support in making referral of cases to the school's Occupational Health provider.

4.6 Role of your occupational health service provider

The occupational health service is an independent professional qualified practitioner who can:

- a) Provide an independent opinion as to the fitness of an employee to carry out his/her duties.
- b) Identify and recommend additional support such as counselling, therapy etc where appropriate.
- c) Advise on temporary and/or permanent changes in duties and responsibilities which might be required to enable the employee to return to his/her duties or redeployment to another post in the school where appropriate.
- d) Advise on periods of rehabilitation if appropriate.
- e) Advise on retirement on health grounds.
- f) Assist the Governing Body, Headteacher, and where appropriate the Local Authority, in reaching decisions about employees' health issues.
- g) Assist the Governing Body, Headteacher, and where appropriate the Local Authority in reaching decisions about alcohol, drug or substance abuse.
- h) Assist in differentiating between illness and capability, competence or conduct, where relevant.

4.7 Role of Vocational Rehabilitation Consultant (Access to Work Mental Health support)

- a) Provision of confidential and vocational support for employees with mental illness to retain or regain their ability to participate at work.
- b) Provision of specialist advice and guidance to managers from Vocational Rehabilitation Consultants.

5. Types of sickness absence and sickness absence triggers

The employee must be made aware that their absence is causing concern, prior to the sickness absence triggers below being formally implemented.

5.1 Any unacceptable patterns of absence

a) absences which are causing a concern for the school

or

b) regular patterns of absences such as:

- regularly taking Mondays and/or Fridays off
- absent adjacent to school holidays
- taking the same period of sickness absence each year

5.2 Frequent and persistent sickness absence triggers

Frequent and Persistent Sickness Absences can normally be defined as those of 5 working days (seven calendar days) or less which are self-certificated by the individual, ie not supported by a qualified medical practitioner. It can also be defined as absences of up to 20 consecutive days that require a medical certificate (Fit Note).

The sickness absence triggers are:

- **3 spells of absence in a 6-month period** (rolling 6 months*)

or

- **10 days of absence over a 12-month period** (rolling 12 months*)

** A rolling period of absence includes **all sickness absence**, irrespective of whether they have been considered in any previous meeting.*

NB 'Working Day' is defined as a day that an employee works regardless of the number of hours. NB The above triggers are applied on a pro-rata basis.

5.3 Long-term certificated absences

Long-term absence can be defined as:

- **medically certificated** absences (Fit Notes)
- normally lasting for a continuous period of **twenty working days** (or over a 4-week period) or more

In these cases, it may be appropriate to inform the employee during their sickness absence, as part of their welfare meeting, that they have hit an absence trigger. The school may then proceed with formal stages.

5.4 Any continuous period of absence over 20 working days

When employees are absent from school due to long-term sickness, they need sympathy and support. It is important that the Headteacher (or his/her nominee) takes an interest in their welfare and keeps them informed about any developments in school so that they do not feel isolated and forgotten.

It is the Headteacher's (or his/her nominee) responsibility to ensure they are aware of any changes and/or updates with each employee, and to take the appropriate action.

Should a case become complex in any way, and the skills of specialist agencies such as occupational health are required, Headteachers are recommended to discuss the case with your HR provider for guidance and support on the recommended steps to follow.

5.5 Other sickness absence triggers

Any period of unauthorised absence may include:

- when an employee has been absent and not submitted a medical certificate
- when an employee has failed to report an absence from work
- when an employee has failed to follow sickness absence reporting procedures

Under these circumstances, the school may consider suspending occupational sick pay and/or take disciplinary action for failure to comply with the sickness absence reporting procedures.

5.6 Supporting employees with Disability

Where an employee has been identified as having / or likely to be defined as having a disability, as defined by the Equality Act, school should:

a) Discuss with the employee, the impact that the medical conditions have on their ability to carry out their duties

b) Consider making reasonable adjustments, taking into account the following:

- Does it reduce or remove the disadvantage for the person with the disability?
- Is it practical to make/implement the adjustment?
- Is it affordable to the school to make?
- Could it harm the health and safety of or have an adverse impact on others?

5.7 Mental Health

If an employee has a mental health issue, it's important their employer takes it seriously. There are many types of mental health issue. An issue can happen suddenly, because of a specific event in someone's life, or it can build up gradually over time. Common mental health issues include:

- depression
- anxiety
- low mood

and in many cases medical conditions are likely to be covered by the Equality Act 2010 (Disability Discrimination).

However, in many cases mental illness will start with a stress related absence and schools should take appropriate action to support the employee at the early stages of the sickness absence, or ideally before they are absent from work.

5.8 Long COVID

Long COVID is defined as having persistent COVID-19 symptoms after the initial infection. These could include but is not limited to breathlessness, coughing, fatigue, and 'brain fog'. Employees with Long COVID may or may not be able to work.

Long-term absence due to Long COVID **may be considered** to be a disability under the Equality Act 2010. As a result employers **may** have a duty to consider reasonable adjustments to support the employee to return to work.

It is recommended that advice is sought from your Occupational Health Provider, before an employee who has been diagnosed with Long Covid returns to work.

5.9 Disability Discrimination (under Equality Act 2010)

- a) **Direct disability discrimination:** this occurs where a disabled person is treated less favourably because of the disability itself.
- b) **Indirect disability discrimination:** this occurs where a provision, criterion or practice (PCP) applied by the employer puts disabled persons (and the individual) at a particular disadvantage and the PCP is not a proportionate means of achieving a legitimate aim.
- c) **Harassment relating to disability:** this occurs where a person is subjected to unwanted conduct related to a disability (their own or someone else's).
- d) **Victimisation:** this occurs where a person is subjected to detrimental treatment because they have done (or may do) "protected acts" such as complaining about disability discrimination, bringing a disability discrimination claim or getting involved in some way with another person's complaint or claim.
- e) **Discrimination arising from disability:** this occurs where a disabled person is treated unfavourably due to something arising as a consequence of their disability and the treatment is not a proportionate means of achieving a legitimate aim. This form of protection is only available to disabled individuals and does not apply to any of the other protected characteristics covered under the Act.

5.10 Constructive knowledge of a disability

Constructive knowledge of a disability is where an employer would be aware of facts relevant to an individual's disability, had it had been reasonably diligent. The employer must know, or ought to know, about the likelihood of the disabled person suffering a substantial disadvantage.

To address this issue schools should consider the following steps:

Investigate: gather as much information as possible to understand the individual's health. This includes GP certificates, correspondence and notes of the employer's own interactions with the individual, advice received from occupational health and notes of return to work meetings.

Decide when to obtain specialist advice: consider carefully when it's right to obtain occupational health advice / specialist advice, e.g. specialist consultant. Depending on facts, it may be appropriate to wait, but the position should be kept under review. Ensure that the school provides clear information and instructions when seeking specialist advice and follow up where necessary.

Be pragmatic and don't be afraid to make reasonable adjustments: making adjustments will not be viewed as a concession of knowledge of disability and may help to resolve the issue in hand. Where you have information which suggests the individual may be disabled, it would be sensible proactively to address the issue of adjustments and informal action

When the Headteacher, or his/her nominee considers that action should be taken regarding an employee's sickness absence, they should arrange an informal meeting. ***NB This action should normally be taken prior to any sickness absence 'triggers' being hit (see types of sickness absence and sickness absence triggers).***

The Headteacher, or his/her nominee should have a supportive informal discussion with the individual in order to discuss any issues or concerns which may be affecting their ability to attend school. The Headteacher should:

1. Discuss the impact of the absence on all parties and support improvement.
2. Explore any work, disability, welfare or domestic problems underlying the absence.
3. Explore different working patterns or other options to maintain and/or support return to work (if appropriate).
4. Ensure the employee clearly understands what improvement is required, how their attendance will be reviewed, and over what time period.
5. Advise the employee that if their attendance does not sufficiently improve, or if any improvement is not maintained, they would move to the formal procedure and, ultimately, they could be dismissed on grounds of sickness absence capability.

NB In the case of long-term sickness absence (normally over 20 days) this can be undertaken as part of an initial welfare meeting.

6. Formal procedure

6.1 Formal Stages

If, **following the informal action meeting**, the employee's attendance continues to cause concern and/or the 'triggers' referred to have been met, the employee will be required to attend a formal hearing.

NB Absence records considered at any hearing should only highlight sickness absences of concern.

There are four formal stages to the Attendance Management (Capability) procedure, which would 'normally' be followed when managing frequent persistent absence and would be considered by the Headteacher or Staff Dismissal Committee.

Stage 1 – Consideration of a verbal warning

(which would remain "live" for a period of 6 months)

Stage 2 – Consideration of a written warning

(which would remain "live" for a period of 12 months)

Stage 3 – Consideration of a final written warning

(which would remain "live" for a period of 2 years)

Stage 4 – Consideration of capability dismissal due to sickness absence

6.2 Procedure for attendance management for stages 1 to 3

6.2.1 Arranging a formal meeting

The employee must be notified in writing and (unless varied by mutual agreement) given a minimum of normally five days' notice (excluding weekends), that the hearing will be held under the terms of the school's Attendance Management (Capability) Procedure, and will be considered by the Headteacher or their nominated person.

The letter should include full details:

- employee's sickness absence record
- informed that they are entitled to be represented by a teacher professional association, trade union representative or work colleague if they so wish (see sample letters)
- enclose a copy of the Management of Attendance (Capability) Policy and Procedure

6.2.2 Format for a formal sickness absence meeting

1. Point out the impact of the individual's absence on their work and their colleagues and encourage improvement.
2. Explore any work, disability, welfare or domestic problems underlying the absence.
3. Explore different working patterns (if appropriate).
4. Ensure the employee clearly understands what improvement is required, how their performance will be reviewed and over what time period.
5. Advise the employee that if their attendance does not sufficiently improve, or if any improvement is not maintained, this may result in a formal sanction being imposed and could lead to dismissal on grounds of sickness absence capability.

6.2.3 Possible outcomes of formal sickness absence meeting

The decision of the Headteacher or Staff Dismissal Committee should be one of the following:

- a) To confirm with the employee the matter is not being pursued (due to mitigating circumstances).
- b) To find that the alleged breach of the Management of Attendance (Capability) Policy and Procedure is substantiated in whole or part but resolve that no action be taken.
- c) To impose a recorded verbal, written or final written warning, advising that any further absences or breaches of the sickness absence triggers may ultimately lead to dismissal.

6.3 Formal Stage 4 (Final) – attendance management hearing

If, following the issue of a final written warning, any of the sickness absence triggers are met or attendance continues to cause concern, a further formal hearing should be arranged. This meeting will be conducted by the school's Staff Dismissal Committee. (See Operational Guidance & Appendices document for the format of the hearing.)

7. Managing capability – ‘long term sickness absence’

Where an employee has experienced long term sickness absence a school must maintain regular contact and welfare visits should be made, in accordance with the Management of Attendance Operational Guidance.

It is also strongly advised that you seek advice from your HR provider, in the management of long-term absence and involve them in discussions with the employee and the employee’s professional association, trade union representative or work colleague.

Advice should also be sought from your occupational health provider on issues such as:

- a) Prognosis of the current absence.
- b) Likelihood of return to work.
- c) Time frame for return to work.
- d) Phased return to work.
- e) Could the Equality Act apply?
- f) Is the absence related to pregnancy?
- g) Are there any reasonable adjustments, amendments to current duties and/or redeployment to another role within the school (if possible) that could facilitate the employees return to work?
- h) Fitness to attend meetings.
- i) Whether the employee could be eligible for ill health retirement or will continue to be unfit for work for the foreseeable future.

NB It may be appropriate to refer the employee to your OH provider on more than one occasion if the absence is prolonged to seek up to date information.

In cases of long-term sickness absence where there is **little or no likelihood** of the employee returning to school within the reasonably foreseeable future, the school should consider taking formal action under this procedure. Under these circumstances the capability matter can be referred directly to the Staff Dismissal Committee by the Headteacher.

NB It will not normally be necessary for the Staff Dismissal Committee to meet and issue a final warning in such cases.

Long term sickness absence generally falls into two categories, namely:

- a) serious incapability (incapable of returning to work within a reasonable time frame)
- b) ill health retirement

7.1 Serious incapability – Incapable of returning to work within in a reasonable time frame

Serious incapability is normally an illness or medical condition where there is no likelihood of a return to work within a reasonable period and this has been confirmed by Occupational Health.

The Governors can deal with this within the Attendance Management Capability Procedure under 'some other substantial reason for dismissal', in that the employee has not attended the school since a given date.

In these circumstances the employee might ultimately recover over time, however the school can consider dismissal on the ground of medical capability due to sickness absence.

NB where there is or could be a disability (as defined in the Equality Act) the school should seek advice from their occupational health provider on whether the employee is likely to meet the criteria for ill health retirement (support staff only)

7.2 Ill health retirement

7.2.1 Teachers

Teachers apply to the Teachers' Pension Scheme, who then seek advice from a panel of medical advisers, which makes the final decision on whether a teacher is eligible for:

- a) Partial Incapacity Benefit (PIB) – unfit to teach (but could undertake other employment),
- or
- b) Total Incapacity Benefit (TIB) – incapable of undertaking any gainful employment

7.2.2 Support staff

Ill health retirement may be recommended by the school's occupational health provider, where an occupational health physician considers that the employee is unfit to undertake their duties for a significant amount of time or permanently.

There are 3 tiers of ill health retirement that can be recommended:

Tier 1 – No reasonable prospect of the employee undertaking any gainful employment **before the age of 65**.

Tier 2 – Unable to undertake gainful employment **within the next 3 years** of leaving employment, but it is likely that he/she will be capable of undertaking gainful employment **before the age of 65**.

Tier 3 – Unable to undertake gainful employment **within the next 3 years** of leaving employment (or before age 65 if earlier).

In the case of ill health retirement for support staff, the Staff Dismissal Committee will still be required to meet in order to terminate the contract of employment formally due to ill health retirement (medical capability), in order that the employee can access their pension.

7.3 Attendance management hearing conducted by the Staff Dismissal Committee

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

NB Governing Bodies should ensure that at the first meeting of the School Governors in Autumn Term that both a Staff Dismissal Committee and a Staff Dismissal Appeal Committee are properly constituted and have appropriate powers delegated to them.

7.4 Preparation for Stage 4 attendance management hearing

The employee should be notified by the Headteacher in writing and (unless varied by mutual agreement) giving a minimum of normally 10 days' notice (excluding weekends), that the hearing is to be held under the terms of the school's Management of Attendance (Capability) Policy and Procedure.

1. The letter should include full details of the employee's sickness absence records and enclose a copy of the Management of Attendance (Capability) Policy and Procedure.
2. A copy of the above letter should be forwarded by the Headteacher to the Clerk of the Governing Body and to the Director of Children's Services or his nominated officer well in advance of the hearing.
3. Documentation from both parties should be given to the Staff Dismissal Committee 3 working days prior to the hearing for the Committee to be better informed about the issues of the case.
4. In the case of Maintained Community or Voluntary Controlled schools, The Director of Children's Services, or their nominated HR officer and in specific circumstances, the Authority's Head of Legal Services or his nominated representative, should be invited to attend the capability hearing for the purpose of giving advice. The Committee must consider any advice given before reaching a decision.
5. Any employee wishing to appeal against a decision to dismiss made by the staff dismissal committee can use the appeal procedure set out below.

An employee is entitled to be represented by a teacher professional association, trade union representative or work colleague, and this entitlement should be included in the above letter.

In the case of an attendance management hearing being conducted with an employee who is an accredited official of a recognised teacher professional association or trade union, consultation should take place prior to the above letter being sent with a senior official of their teacher professional association or trade union.

NB Format for Stage 4 attendance management hearing is provided as in the Operational Guidance & Appendices document.

7.5 Attendance management (capability) appeal hearing

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

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

Where the decision of the Staff Dismissal Committee is that an employee should cease to work at the school, a copy of the written notification to the employee setting out the reasons for the decision must be sent to the Director of Children's Service (for maintained community and voluntary controlled schools).

Where an appeal is not lodged against a decision of the Staff Dismissal Committee (in maintained community and voluntary controlled schools) that the employee should cease to work at the school, the Local Authority must terminate the contract of employment within 14 days of the initial dismissal decision (IDD).

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

8. Capability, Disciplinary and Grievance Procedures

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

If an employee's level of absences, whether covered by self-certification or certified by a Doctor, is such that it causes serious concern, action can be taken in accordance with the school's Management of Attendance (Capability) Policy and Procedure.

It should also be noted that **unauthorised absence** (no notification of absence) and **abuse of the school's sick pay scheme** are considered as falling within one of the areas constituting gross misconduct and could therefore, if substantiated, result in dismissal through the school's **Disciplinary Procedure**.