

Termination of Employment of EA Employees in Schools on the Grounds of Ill-Health or Capacity

Contents

	Page
1. General Provisions	3
2. Scope of the Procedure	4
3. Occupational Health Referral	4
4. Writing to the Employee	5
5. Meeting With the Employee	5
6. Proposal to Make a Determination to Terminate Employment and the Right to Make Representations	6
7. Appeal	6
8. Request by an Employee to be Considered for Termination of Employment on the Grounds of Ill-health or Capacity	8
9. Proceeding to Dismissal	8
10. Explanatory note on Superannuation Benefits for Employees in Membership of the Northern Ireland Local Government Officers' Superannuation Scheme (NILGOS)	9
FLOW CHART	
Termination of EA employees in schools on grounds of ill health or capacity	10

1. GENERAL PROVISIONS

- 1.1.** The purpose of this document is to promote fair and consistent treatment of employees in those circumstances where:
- a)" the weight of medical evidence suggests that an employee may no longer have the health or physical capacity for employment in their own role or in a suitable alternative role; or
 - b)" an employee's attendance at work is such as to question whether he/she is capable of providing regular and sustained service, and
 - c)" consideration is therefore to be given to termination of employment on the grounds of ill-health or capacity in accordance with the Employment Rights NI Order 1996 (as amended).
- 1.2.** This Procedure supplements:
- (i)" Schedule 2 of the Education (NI) Order 1998, and
 - (ii)" Education Authority Managing Attendance – Policy and Procedures – all Education Authority Support Staff.
- 1.3.** This procedure should not be followed for those cases where there is no issue of capacity or capability on the grounds of ill-health. The Education Authority (EA) will deal with performance difficulties separately.
- 1.4.** In applying this procedure, account shall be taken of the provisions of the Disability Discrimination Act 1995 (as amended).
- 1.5.** The Board of Governors shall establish a sub-committee, constituted in accordance with the relevant scheme of management, with delegated authority to deal initially with the case. A separate appeal panel, constituted in accordance with the scheme of management, shall also be nominated to hear any subsequent appeal and shall have no other involvement in any other aspect of this process.
- 1.6.** Where the employee under consideration is not currently on sick leave, or proposes to return from sick leave, and where there is sufficient evidence available to give rise to concerns regarding the employee's health or physical capacity such as to pose a risk either to the employee or to pupils/persons in his/her charge, or to have a serious adverse effect on performance, the employee may be suspended on health and safety grounds in order to allow a referral to an occupational health specialist. Where a Board of Governors or its delegated authority, proposes to suspend an employee on these grounds, EA should be consulted, where possible in advance, if not already involved. The employee shall be given written confirmation of the suspension. Such a suspension shall be as a precaution and shall be with full pay.
- 1.7.** **Any medical information made available to EA, the principal or the Board of Governors of the school, must be retained and processed in strict confidence, and comply with the General Data Protection Regulations (GDPR) and the Access to Medical Reports Act 1988 (AMRA).**

- 1.8.** Schedule 2 of the Education (NI) Order 1998 provides that the relevant employee of EA is entitled to attend all proceedings of the Board of Governors relating to any determination by the Board of Governors that any employee, employed at the school should 'cease to work there under that contract'; and such advice must be considered by the Board of Governors before making any such determination.

2. SCOPE OF THE PROCEDURE

- 2.1.** This procedure shall apply:

- a)" where it appears to the Board of Governors that an employee may be permanently unfit, unfit for the foreseeable future or incapable of providing regular and sustained service in their own role or in a suitable alternative role; or
- b)" where an employee's attendance at work is such as to question whether he/she is capable of providing regular and sustained service; **or**
- c)" where all reasonable action has been taken to promote improved attendance in line with the EA Managing Attendance Procedure for non-teaching employees, and where attendance has not improved to an acceptable level.

In all cases where the EA Procedure for the Termination of Employment of EA Employees in Schools on the Grounds of Ill-health or Capacity applies, the employee concerned shall be provided with a copy of the procedure.

3. OCCUPATIONAL HEALTH REFERRAL

- 3.1.** Where the Board of Governor believes that there are grounds for considering termination of an employee's contract on grounds related to ill-health or capacity, it shall arrange for the employee to be examined by an independent occupational health specialist. (An independent occupational health specialist will not be employed by EA. EA will maintain a contract with one or more providers of occupational health services to secure the provision of such services.) The occupational health specialist will advise EA on the employee's ability to perform the job for which they were recruited, taking account of any reasonable adjustments or redeployment.
- 3.2.** The sub-committee of the Board of Governors shall write to the employee to advise of its intention to refer the employee to an independent occupational health specialist, and to advise that, subject to the outcome of the referral, this may lead to consideration of termination of employment.
- 3.3.** EA shall arrange the medical appointment, the costs of which shall be charged to the school's budget.
- 3.4.** If the employee, without good cause, fails to attend for medical examination or refuses to make available relevant medical evidence or information, the sub-committee of the Board of Governors, after consultation with EA, may proceed with this process on such evidence and information available to it. Failure to attend, without reasonable notice and/or providing good reason to EA or the Board of Governors, shall result in the costs associated with the examination being the responsibility of the employee; unless EA decides otherwise. Refusal to attend for medical examination, without reasonable explanation, may amount to misconduct.

- 3.5.** At any time before the medical examination, EA or the sub-committee of the Board of Governors, or the employee may submit to the occupational health specialist, a statement containing evidence or other information relevant to the examination.
- 3.6.** On receipt of the medical report, EA shall inform the sub-committee of the Board of Governors of the occupational health specialist's opinion and, where appropriate, shall advise on the duty to make "reasonable adjustments" in accordance with the Disability Discrimination Act 1995, (as amended).
- 3.7.** The sub-committee of the Board of Governors shall write to the employee to advise him/her of the medical opinion, and to invite the employee to a meeting to discuss the matter and consider the way forward.

4. WRITING TO THE EMPLOYEE

- 4.1.** Where the sub-committee of the Board of Governors, based on the medical opinion of an independent occupational health specialist, contemplates terminating an employee's contract on the grounds of ill-health or capacity, the sub-committee will write to the employee as follows:
- a)" the letter will state that termination of employment is being contemplated, and the grounds for contemplating such action.
 - b)" the letter will include details of the employee's relevant absences, and will outline the steps taken to address ill-health related absences to date.
 - c)" the sub-committee will enclose a copy of the medical opinion and the employee's sickness absence record, and will invite the employee to a meeting to discuss the matter and to consider the way forward.
- 4.2.** The employee may submit, to the sub-committee of the Board of Governors, any medical evidence that he/she considers to be relevant to be considered at this meeting, but any costs related to this must be met by the employee.

5. MEETING WITH THE EMPLOYEE

- 5.1.** Where termination of employment is being contemplated on grounds related to ill-health or capacity, as outlined in paragraph 4.1 above, the sub-committee will organise to meet with the employee, to provide the opportunity to discuss, with the employee, the reasons for contemplating termination of his/her employment. The employee will be provided with at least one week's notice of the meeting to afford them a reasonable opportunity to consider their response to the notification that termination of employment is being contemplated.
- 5.2.** The employee may be accompanied at the meeting, if he/she wishes, by a trade union representative or a colleague. Where the employee has failed to attend for medical examination, or refuses to make available medical evidence or information, the sub-committee of the Board of Governors shall nonetheless invite the employee to a meeting to discuss the matter and consider the way forward.
- 5.3.** Where, on the basis of any new medical evidence submitted by the employee, it becomes apparent to the sub-committee of the Board of Governors during the course of the meeting that further medical advice is required before reaching a determination, this shall

be arranged. The meeting will be adjourned and shall be reconvened once this further medical advice is received. Any costs associated with obtaining further medical advice from an occupational health specialist will be met from the school's budget.

6. PROPOSAL TO MAKE A DETERMINATION TO TERMINATE EMPLOYMENT AND THE RIGHT TO MAKE REPRESENTATIONS

- 6.1.** Following the meeting outlined in paragraph 5 above, the sub-committee of the Board of Governors shall write to the employee to confirm the outcome of the discussions. Where, on the basis of all the evidence available to it, including the occupational health specialist's opinion, the sub-committee of the Board of Governors **proposes** that the Board of Governors make a determination that the employee's employment should cease on grounds related to ill-health or capacity; for example that he/she is permanently unfit, unfit for the foreseeable future or incapable of providing regular and sustained service, it shall inform the employee, in writing.
- 6.2.** The sub-committee shall provide, to the employee, information that it considered when arriving at the proposal. The employee shall be advised of the right to make representations to the Board of Governors, **excluding the members of the appeal panel**, in accordance with Schedule 2 of the Education (NI) Order 1998, in respect of the action it proposes to take; including, if the employee so wishes, oral representations to such person or persons as the board of governors may appoint for the purpose. The Board of Governors may appoint some or all of the members of the sub-committee, and/or they may appoint other governors not previously involved in the matter, to receive such representations. The Board of Governors shall have regard to those representations before making a determination. Such representations shall not constitute an appeal.
- 6.3.** Following any representations made under 6.2 above, or where the employee chooses not to make representations, the Board of Governors shall decide whether to make a determination to dismiss the employee on any of the grounds in 6.1 above. Where the Board of Governors makes a determination that the employee's contract of employment should be terminated on grounds relating to ill-health or capacity, it shall write to the employee to advise of the determination and the right of appeal.
- 6.4.** Where the employee does not exercise the right of appeal set out under section 7 below, the Board of Governors shall notify EA in writing of the determination and the reasons for it. EA shall proceed to terminate the employee's employment, providing contractual notice.
- 6.5.** Where on the basis of all the evidence available to the Board of Governors, including the occupational health specialist's opinion, the Board of Governors makes a determination that the employee should continue employment with the school in their own role or in a suitable alternative role, the Board of Governors shall write to the employee to confirm the determination.

7. APPEAL

- 7.1.** An appeal against a determination to terminate employment must be notified in writing by the employee to the Board of Governors within 10 working days of the date of receipt of the determination, setting out the grounds of the appeal and providing initial supporting

medical evidence. If the employee is unfit/unable to make the appeal, his/her recognised trade union or an EA colleague may make the appeal on the employee's behalf.

- 7.2.** Where, in consideration of the grounds for appeal, there is reason to recommend obtaining a second independent medical opinion, EA, at the request of the Board of Governors shall, normally within 15 working days, contact the employee to:
- a)" Notify the employee of its nomination of an independent medical adviser, not previously involved in the case to consider the medical grounds of the appeal and provide an opinion;
 - b)" Notify the employee of any arrangements for a further medical examination where appropriate, and;
 - c) Seek the employee's agreement to the nomination.
- 7.3.** An objection to a nominated independent medical adviser must state the grounds of objection, and no more than one objection shall be allowed.
- 7.4.** The employee shall not be responsible for the cost of the independent medical adviser's fees, which shall be met from the school's budget.
- 7.5.** The independent medical adviser shall be given all relevant information by EA and/or the Board of Governors, the occupational health specialist appointed by EA, the employee, and the employee's medical adviser(s).
- 7.6.** If the employee requests a copy of the sickness record and the medical opinion, as given by the independent medical adviser, these shall be forwarded to the employee and, if requested by the employee and with the employee's written consent, to the nominated trade union representative involved in the case in strictest confidence.
- 7.7.** On receipt of the medical report from the independent medical adviser, EA shall inform the board of governors and the employee of the medical opinion, and, where appropriate, shall provide any further guidance that may be required on the duty to make "reasonable adjustments" in accordance with the Disability Discrimination Act 1995, (as amended).
- 7.8.** Where the employee's grounds for appeal do not relate to the content of the occupational health specialist's medical opinion, EA will not normally nominate a second independent medical adviser. Where it is deemed that additional medical advice is required in order to consider the appeal, further medical advice will be sought.
- 7.9.** The employee shall be invited, in writing, to attend an appeal meeting with the appeal panel of the Board of Governors to hear his/her appeal against the determination to terminate his/her employment, and to consider all available information including, where appropriate, the medical report from the independent medical adviser; a copy of which shall be sent to the employee.
- 7.10.** The appeal meeting shall normally take place within 10 working days following receipt of the notification of appeal from the employee (or within 10 working days of receipt of the independent medical adviser's report where this has been requested). The employee may be accompanied at the appeal meeting by his/her trade union representative or an EA

colleague. An employee of EA may attend the appeal meeting to give advice to the appeal panel of the Board of Governors as outlined in paragraph 1.8 above.

- 7.11. On hearing the appeal, the appeal panel shall either allow the appeal or uphold the determination of the Board of Governors to terminate the employee's employment on grounds related to ill-health or capacity.
- 7.12. In the event that the appeal panel allow the appeal, the Board of Governors shall notify EA of its decision. Where a decision is made not to terminate employment, the Board of Governors should seek advice from EA in relation to the application of the Managing Attendance – Policy and Procedures – all Education Authority Support Staff; and to seek guidance as appropriate on supporting the employee's return to work.
- 7.13. The Board of Governors shall communicate the decision to the employee in writing, within 15 working days of the appeal meeting.
- 7.14. There is no further right of appeal.

8. REQUEST BY AN EMPLOYEE TO BE CONSIDERED FOR TERMINATION OF EMPLOYMENT ON THE GROUNDS OF ILL-HEALTH OR CAPACITY

- 8.1. Where an employee makes a request to the Board of Governors to be considered for retirement on grounds of ill-health or capacity, the Board of Governors shall request that EA should arrange for the employee to be examined by an occupational health specialist, and shall provide the occupational health specialist with any medical information provided by the employee.
- 8.2. Where the opinion of the occupation health specialist is that the employee should not be retired on the grounds of ill-health (namely, that the employee should be able to provide regular and sustained attendance, and that he/she is not permanently unfit or unfit for the foreseeable future), EA will advise the Board of Governors and the employee of this opinion in writing.
- 8.3. Where the employee does not accept the determination of the Board of Governors that the employee should continue employment with the school in their own role or in a suitable alternative role, the employee may, on one occasion and within 10 working days of receiving the determination, request a second independent medical opinion. In the event that the opinion of the independent medical adviser is for example that the employee is permanently unfit, unfit for the foreseeable future or incapable of providing regular and sustained service EA will proceed to give notice to terminate the employee's contract of employment. In these circumstances there is no further right of appeal.

9. PROCEEDING TO DISMISSAL

- 9.1. Where the employee does not exercise the right of appeal set out under section 7 above, or where the appeal panel uphold the determination to terminate the employee's employment on grounds related to ill-health or capacity (namely that the employee is unable to provide regular and sustained attendance, or is permanently unfit or unfit for the foreseeable future), or the employee has made a request under Section 8 above the Board of Governors shall notify EA in writing, of the determination and the reasons for it, and will

advise EA to proceed to terminate the employee's employment, providing contractual notice.

9.2. An employee whose employment has been terminated in accordance with this procedure may also seek advice and support from one or more of the following;

a." Recognised trade union

b." The Independent Confidential Welfare Service contracted by EA

10. EXPLANATORY NOTE ON SUPERANNUATION BENEFITS FOR EMPLOYEES IN MEMBERSHIP OF THE NORTHERN IRELAND LOCAL GOVERNMENT OFFICERS' SUPERANNUATION SCHEME (NILGOS)

10.1. It should be noted that the decision to terminate an employee's contract of employment, on grounds relating to ill-health or capacity, is a matter for the Board of Governors and is entirely separate from any decision relating to the employee's superannuation benefits.

10.2. The Northern Ireland Local Government Officers' Superannuation Scheme Committee (NILGOSC), not EA or the Board of Governors, is responsible for putting into effect the superannuation benefits that may be payable to an employee upon retirement on the grounds of permanent ill-health.

10.3. NILGOSC must satisfy itself that the employee qualifies for ill-health retirement benefits; and EA recommends that employees contact NILGOSC directly for guidance on their criteria for ill-health retirement.

10.4. NILGOSC's decision is based on a report from one of its own registered medical practitioners qualified in occupational health medicine.

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Please Note:

Green shaded boxes indicate where the employee will be 'signposted' to another procedure.

- BOG/SC contacts EA for advice
- Refusal to attend may amount to misconduct

BOG/SC refer to Managing Attendance Policy and Procedures – all EA Support Staff.
BOG/SC to meet with employee to consider the best way forward

