

## **TERMINATION OF EMPLOYMENT OF TEACHERS ON THE GROUNDS OF ILL HEALTH OR CAPABILITY**

### **1. GENERAL PROVISIONS**

- 1.1** The purpose of this document is to provide fair and consistent treatment of teachers in those circumstances where consideration is to be given to termination of employment by the Board of Governors where the weight of medical evidence suggests that a teacher may no longer have the health or physical capacity for employment as a teacher or where a teacher's attendance at work is such as to question whether he/she is capable of providing regular and sustained service. Such consideration should take into account any provisions of the disability legislation.
- 1.2** This Procedure supplements:
- (i) the Teachers' (Eligibility) Regulations (Northern Ireland) 1997;
  - (ii) Articles 35 (3) and 58 and Schedule 2 of the Education (NI) Order 1998; and
  - (iii) The Teacher Attendance Procedure (TNC 2008/2)
- 1.3** For the purpose of this procedure; (a) 'teacher' means a teacher employed in a grant-aided school and includes teachers appointed to the posts of Principal and Vice-Principal. (b) 'Employing Authority' means for controlled schools, the board responsible for the management of the school and for catholic maintained schools, the Council for Catholic Maintained Schools. In the case of voluntary grammar and grant maintained schools, the Board of Governors is the employing authority.
- 1.4** In applying this Procedure account shall be taken of the provisions of the Disability Discrimination Act 1995.
- 1.5** Where the teacher under consideration is not currently on sick leave, or proposes to return from sick leave and there is sufficient evidence available to give rise to concerns regarding the teacher's health or physical capacity such as to pose a risk either to the teacher or to pupils in his/her charge or to have a serious adverse effect on teaching, the teacher may be suspended on health and safety grounds in order to allow a referral to an Occupational Health Physician. Where a Board of Governors or its delegated authority, proposes to suspend a teacher on these grounds, the Employing Authority should be consulted, where possible in advance, if not already involved. The teacher shall be given written confirmation of the suspension. Such a suspension shall be as a precaution and shall be with full pay.
- 1.6** **Any medical information made available to the Employing Authority, the Principal or the Board of Governors must be retained in strict confidence.**
- 1.7** Schedule 2 of the Education (NI) Order 1998 provides that the relevant officer of the Employing Authority is entitled to attend all proceedings of the Board of Governors relating to any determination by the Board of Governors that any person employed at the school should cease to work there and such advice must be considered by the Board of Governors before making any such determination.

**2. PROCEDURE**

- 2.1** This Procedure shall apply where it appears to the Board of Governors that a teacher may no longer have the health or physical capacity for employment as a teacher or where a teacher's attendance at work is such as to question whether he/she is capable of providing regular and sustained service and/or the Teacher Attendance Procedure (TNC 2008/2) has been exhausted. The teacher shall be provided with a copy of this Procedure.
- 2.2** The Board of Governors shall establish a sub-committee constituted in accordance with school's Scheme of Management with delegated authority to deal initially with the case. A separate appeal panel constituted in accordance with school's Scheme of Management shall also be nominated to hear any subsequent appeal and shall have no other involvement in any aspect of this process.

**OCCUPATIONAL HEALTH REFERRAL**

- 2.3** The sub-committee of the Board of Governors, shall write to the teacher to advise of its intention to refer the teacher to the Employing Authority's Occupational Health Physician and advise that, subject to the outcome of the referral, this may lead to consideration of termination of employment.
- 2.4** The Employing Authority shall arrange the medical appointment, the costs of which shall be charged to the school's budget.
- 2.5** If the teacher, without good cause, fails to attend for medical examination or refuses to make available medical evidence or information, the sub-committee of the Board of Governors after consultation with the Employing Authority may proceed with this process on such evidence and information available to it, notwithstanding that further medical evidence is desirable. Failure to attend without reasonable notice and/or good reason to the Employing Authority shall result in the costs associated with the examination being the responsibility of the teacher unless the Employing Authority decides otherwise.
- 2.6** At any time before the medical examination the Employing Authority or the sub-committee of the Board of Governors or the teacher may submit to Occupational Health a statement containing evidence or other matter relevant to the examination.
- 2.7** The teacher may be accompanied at the medical examination by any medical practitioner nominated by the teacher, but any costs related to this must be met by the teacher.
- 2.8** On receipt of the medical report the Employing Authority shall inform the sub-committee of the Board of Governors of the opinion of the Occupational Health Physician and where appropriate shall advise on the duty to make "reasonable adjustments" in accordance with the Disability Discrimination Act 1995.

## **MEETING WITH THE TEACHER**

- 2.9** The sub-committee of the Board of Governors shall write to the teacher to inform him/her of the medical opinion and invite him/her to a meeting to discuss the matter and consider the way forward. Where the teacher 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 also invite the teacher to a meeting to discuss the matter and consider the way forward. Where termination of employment is being contemplated on capability grounds related to ill health (e.g capability to provide regular and sustained service), the teacher shall be informed. The teacher may be accompanied at the meeting if he/she wishes by a Trade Union Representative or a teaching colleague.

## **PROPOSAL TO MAKE A DETERMINATION AND THE RIGHT TO MAKE REPRESENTATIONS**

- 2.10** Following the meeting at 2.9 above the sub-committee of the Board of Governors shall write to the teacher to confirm the outcome of the discussions. Where, on the basis of all the evidence available to it, including the Occupational Health Physician's opinion, the sub-committee of the Board of Governors **proposes** that the Board of Governors make a determination that the teacher's employment should cease on capability grounds related to ill health e.g. that he/she is permanently unfit, unfit for the foreseeable future or incapable of providing regular and sustained service, it shall inform the teacher, in writing. The sub-committee should provide to the teacher information which it considered when arriving at the proposal. The teacher shall be advised of the right to make representations to the Board of Governors, excluding the members of the appeal panel, in accordance with paragraph 5(6) of Schedule 2 of the Education (NI) Order 1998, in respect of the action it proposes to take, including, if the teacher so wishes, oral representations to such person or persons as the Board of Governors may appoint for the purpose. The Board of Governors shall have regard to those representations before making a determination to dismiss.
- 2.11** Where, following any representations made under 2.10 above, or where the teacher chooses not to make representations the Board of Governors shall decide whether to make a determination to dismiss the teacher on any of the grounds in 2.10 above. Where the Board of Governors makes such a determination it shall write to the teacher and advise of the right of appeal.
- 2.12** Where the teacher does not exercise the right of appeal under 2.13 below the Board of Governors shall notify the Employing Authority in writing of the determination and the reasons for it. The Employing Authority shall proceed to terminate the teacher's employment, providing contractual notice.

## **APPEAL**

- 2.13** An appeal against a determination to terminate employment must be notified in writing by the teacher to the Board of Governors within ten 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 teacher is unfit/unable to make the appeal a

teaching colleague or his/her recognised Trade Union may make the appeal on his/her behalf.

- 2.14** On receipt of notification of appeal, the Employing Authority at the request of the Board of Governors shall, normally within 15 days, notify the teacher of:
- (i) its nomination of an Independent Medical Advisor, not previously involved in the case to consider the medical grounds of the appeal and provide an opinion;
  - (ii) the arrangements for a further medical examination; and
  - (iii) shall seek the teacher's agreement to the nomination.

An objection to a nominated Independent Medical Advisor must state the grounds of objection and no more than one objection shall be allowed.

- 2.15** The teacher shall not be responsible for the cost of the Independent Medical Adviser's fees, which shall be met from the school's budget.
- 2.16** The Independent Medical Adviser shall be given such information by the Employing Authority and/or Board of Governors, the Employing Authority's Occupational Health Physician, the teacher and the teacher's medical adviser/s as is considered necessary for the formulation of a medical opinion.
- 2.17** The teacher may be accompanied at the medical examination by any medical practitioner nominated by the teacher, but any costs related to this must be met by the teacher.
- 2.18** If the teacher requests a copy of the sickness record and the medical opinion, as given by the Employing Authority's Occupational Health Physician, these shall be forwarded to the teacher and, if requested by the teacher and with the teacher's written consent, to the nominated full time Union Official involved in the case in strictest confidence.
- 2.19** On receipt of the medical report from the Independent Medical Adviser the Employing Authority shall inform the Board of Governors and the teacher of the medical opinion.
- 2.20** The teacher shall be invited, in writing, to attend an appeal meeting with the appeal panel of the Board of Governors, and any other governor who may have to withdraw under the provisions of the Scheme of Management, to hear his/her appeal against the determination to terminate his/her employment and to consider the medical report from the Independent Medical Adviser, a copy of which shall be sent to the teacher.
- 2.21** The appeal meeting shall normally take place within ten working days following receipt of the independent medical report. The teacher may be accompanied at the appeal meeting by his/her trade union representative or a teaching colleague. An officer of the Employing Authority may attend the appeal meeting to give advice to the appeal panel of the Board of Governors.
- 2.22** On hearing the appeal, the appeal panel shall either allow the appeal or uphold the determination of the Board of Governors to terminate the teacher's employment on the capability grounds related to ill health.

- 2.23 In the event that the appeal panel allow the appeal the Board of Governors shall not proceed to notify the Employing Authority of its determination. In such circumstances the Board of Governors should seek advice from the Employing Authority.
- 2.24 The decision of the Board of Governors shall be given to the teacher in writing, within fifteen working days of the appeal meeting.
- 2.25 There is no further right of appeal.

#### **PROCEEDING TO DISMISSAL**

- 2.26 Where the appeal panel uphold the determination to terminate the teacher's employment on capability grounds related to ill health (e.g. that the teacher is unable to provide regular and sustained attendance or is permanently unfit or unfit for the foreseeable future), the Board of Governors shall notify the Employing Authority, in writing, of the determination and the reasons for it and advise the Employing Authority to proceed to terminate the teacher's employment, providing contractual notice.
- 2.27 **It should be noted that the decision on a teacher's termination of employment on capability grounds related to ill health is a matter for the Board of Governors and is entirely separate from the decision on the award of an infirmity pension. A decision on a teacher's eligibility for infirmity pension benefits remains with the Department of Education and in that context the Department may seek such medical opinion as it sees fit.**
- 2.28 A teacher whose employment has been terminated in accordance with this procedure may also seek advice and support from one of more of the following;
- Recognised trade union
  - Carecall – Confidential Welfare Service 0808 800 0002