

# Frequently Asked Questions regarding HRCE's Attendance Support Program

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1. HRCE is saying that the NSTU was “consulted” on this program. What did that process look like?  
The HRCE introduced the Regional Leaders to the Attendance Support Program in the spring of 2018. Since that time the NSTU Regional Leaders have been working with the HRCE Health and Abilities Team to make changes to the language to make it more clear and palatable to teachers. The two parties have been exchanging language as late as October 2019. While the HRCE has made considerable changes to the program language, some parts remain a concern for the NSTU.
2. Since this policy deals with a contractual benefit, without the union agreeing to the program as a whole, how can HRCE implement it?  
Even though the Collective Agreement gives teachers rights with respect to sick leave, it does not fetter the employers' rights to manage absences. The Attendance Support Program does not actually take away any rights to your sick leave.
3. Does this program apply to PSAANS members?  
It is unclear as to which employees this program applies. The NSTU only has jurisdiction over our own members and has no authority or rights to information concerning PSAANS members.
4. Since teachers have 20 sick days per year in their collective agreement, how can a teacher having 16 or more innocent absences “impact their employment with HRCE”?  
Assuming that the sick days are used for the purpose intended, the use of 20 sick days in one year should not have an impact on your employment.
5. As outlined in “Attendance Support Discussion # 1” it explains that the Health and Abilities Team will be “requesting that the employee be in contact to discuss supports that can be provided”. From the NSTU's perspective, is the member obligated to do this? Would there be any negative repercussions for a member who decides not to make contact?  
As noted in the Attendance Support Program, this is a request from the employer. While the program is meant to be supportive in nature, and suggests that participation is voluntary, the NSTU advises that when requested, teachers should contact the employer. In this case, the contact may be simply to acknowledge receipt of the email and to indicate whether they wish to access the supports or not.
6. As outlined in “Attendance Support Discussion # 2” it says the employee has the option or preference to “complete an Attendance Support Action Plan” and if one is created they will be “invited to sign” it. If/when an employee does this, is there a risk of negative repercussions if some/all of the items in the plan are not completed/adhered to?  
It is not likely that a teacher would be disciplined for falling short on an attendance support plan. This would not be unlike a teacher's Professional Growth plan where teachers would often be short of their goals and no repercussions come from it. A teacher who faced discipline through this process would receive representation from NSTU.

7. Does this change anything regarding my responsibility to provide a doctor's note when I'm using my sick time?

No. This program has no ability to change rights under the Collective Agreement. The employer has agreed within the Collective Agreement that they will only request medical information through the form attached to the Agreement, and that it would only be requested after an absence of five consecutive days or after an established pattern of illness.

8. Will the union support my right to file a grievance regarding the application of this program?

The NSTU considers each grievance thoroughly and independently. Without the specific facts of a particular situation it is difficult to commit to supporting a grievance. In any instance where a teacher has been denied their rights under the Collective Agreement the NSTU will support the rights to file a grievance.

9. I've heard the term "frustration of contract" used in regards to employers pursuing terminating an employee for excessive absenteeism. How does this relate to this program and what does the case law say about the benchmark for "frustration of contract"?

The legal doctrine of "frustration of contract" should not arise in relation to the Attendance Support Program. The doctrine of "frustration of contract" applies when an employee's permanent disability makes his or her performance of the employment contract impossible and the obligations of the parties are therefore discharged without penalty. There is no "bench mark" or specific period of time an employee must be off work disabled before an employer can argue frustration, the doctrine enables an employer to terminate an employee – where there is no reasonable likelihood the employee will be able to return to work.

10. Who should I contact if I have other questions or concerns regarding this program?

If you have questions about this program you should contact either your Local President or the HRRC Health and Abilities Team.

11. Can an individual teacher choose to decline the supports offered through this program?

The Attendance Support Program is offering supports for teacher wellness. While a teacher should feel comfortable to decline this offer of support, they should probably consider the value of supports being offered and consider any possible benefit from access to them before choosing to do so.