

Leicestershire County Council Guidance Notes

Unauthorised Leave of Absence - Penalty Notices

Following the Supreme Court ruling on 6th April (the Isle of Wight case), we have been working closely with colleagues in the Legal department to find an appropriate way forward pending any change in legislation or updated Guidance from the Department for Education.

The Local Authority previously issued guidance in light of the hearing at the High Court in May 2016.

You will be aware that the Isle of Wight Council appealed the High Court judgment at the Supreme Court. The appeal was heard on 6th April and a copy of the judgment was sent out to all attendance officers, welfare officers and schools.

The Supreme Court considered the meaning of the word “regularly” in the Education Act. The Supreme Court ruled that the correct interpretation of the word “regularly” is that a child is expected to attend in **accordance with the rules prescribed by the school** (i.e when the school is open).

Lady Hale, Deputy President of the Supreme Court, expressed clear policy reasons for the judgment:

“Unauthorised absences have a disruptive effect, not only on the education of the individual child but also on the work of other pupils”

The Supreme Court’s decision emphasises the need for parents to ensure that their children receive a full and uninterrupted education, which is essential in order to promote a child’s life chances.

Therefore it remains good law, under statute, that a parent should ensure “*regular attendance*” at school. It remains good law that the authorised officers can impose penalty notices where parents fail to ensure that a child is attending regularly and it remains the case that Head teachers have a discretion to approve absences during term time in “exceptional circumstances”.

The statutory defences remain and children are not taken to have failed to attend regularly where they are absent due to religious observance, where absence is authorised by the school, where the parent proves that the child was absent due to illness or unavoidable cause or when there is a failure of authorities to make appropriate travel arrangements.

Making referrals for Prosecutions

The Council recognises that many staff may find it easier to know when to make referrals if there is a defined benchmark (*e.g. say for example 96% attendance*) in order that they may be confident that, if attendance falls below that benchmark, the concerned parent is deemed to have had transgressed the law and the Council will take enforcement action.

However, in light of the Supreme Court’s decision any “benchmark” below 100% would actually be artificial and it would not reflect how the law operates. “Regular attendance” is not strictly achieved if a child attended school on anything less than 100% of the time when the school is open. Moreover, it is not viewed as sensible to communicate to the public that the Council regards taking time off school (*as long as it is below a certain amount*) to be acceptable.

Nevertheless it remains in keeping with the terms and spirit of the judgment to state that it is not the situation in the UK that every breach of a law results in a criminal prosecution. In many cases even though a conviction could be achieved, it may not be in the public interest to prosecute

It remains the position that Head teachers should not authorise leave of absence unless there is a request made in advance and the reason is deemed to be exceptional circumstances.

We would ask Head teachers to continue to request the Local Authority to issue penalty notices in relation to unauthorised leave of absence **by sending us the attendance certificate with the completed form available on the Local Authority website requesting that a Penalty Notice is issued.**

Penalty Notices will be issued where there are 5 or more days of unauthorised leave of absence.

Head teachers should continue to challenge an absence if they do not feel there are exceptional circumstances. This is because any period of unauthorised absence will contribute to any further periods thereafter and may then invoke a penalty notice.

We would recommend that schools adopt the following approach to a leave of absence:-

- Adopt the following wording in **all** policies, documents and on your website:

***“The School and its staff regard the regular attendance of children at school as being vital to each child’s education and development. It is for this reason that non attendances (however short or infrequent) are treated seriously. It remains the policy of the school to only sanction non-attendance during term time in exceptional circumstances.*”**

If your child has unauthorised leave of absence you may either be issued with a Penalty Notice of £120 per parent per child (discounted to £60 if paid within 21 days), or, your case could be referred by the Local Authority directly to the Magistrates' Court for the purposes of a criminal prosecution.”

- As the Supreme Court judgment stated ““regularly” means “in accordance with the rules prescribed by the school”. Therefore it is vital that the schools expectations with regard to “regular attendance” are made clear to parents and pupils in correspondence and in school literature to avoid any confusion in the future.
- In relation to prosecutions taken through the criminal courts each case is decided on its own merits. The Council will consider both evidential and public interest factors before bringing a prosecution. However, for your assistance, the Council is unlikely to consider that it is in the public interest to prosecute parents for very minor infractions of the law. As a general guide, a relatively minor infraction of the law is likely to relate to situations where attendance levels remain above [96%] or where a child has less than five days absence during a full school term.

We trust that the above is helpful to schools. Please raise any queries as they arise with your Attendance Officer. In the event that they are unable to answer your query, they will seek advice from the Pupil Services Court Team.

We confirm that our protocol and code of conduct will be reviewed in due course and you will be consulted in advance as to any significant amendments or additions.

**Lynne Fantham
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Leicestershire County Council**

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