

# Attendance Compliance & Enforcement Service

Leave of Absence in Term-time –Education (Pupil Registration) (England)  
Regulations 2006 as amended by the Education (Pupil Registration) (England)  
(Amendments) Regulations 2013

## Frequently Asked Questions

*These questions and responses have been raised in consultations and through scenarios encountered since the changes have been introduced. They are not intended to remove from Head Teachers their responsibility as per the new regulations to make decisions regarding requests for Leave of Absence in their school.*

### 1. Is there any guidance on what is considered an “exceptional circumstance”?

Whilst the legislation has changed, at this stage, there is no statutory guidance to accompany the changes to assist head teachers in making their decisions. Any reference to ‘leave of absence’ in the guidance ‘Keeping Pupil Registers - Guidance on applying the Education Pupil Registration Regulations’ (2008) is no longer relevant. The legislation is clear it is for the head teacher to decide what constitutes an “exceptional circumstance”.

### 2. Should I have a policy outlining the particular circumstances the school will or will not accept when considering requests for leave of absence during term time?

Schools are discouraged from having a policy focused on exceptions or advising parents of what may be considered to be exceptional; **Head Teachers should exercise their judgement on each individual request and on a case by case basis.**

The ACE Service recommends that schools do not operate “blanket policies”. For example, schools should not approve all requests for leave which are below a certain amount of days or where a pupil has a specific level of attendance (%). Schools should also refrain from routinely refusing any requests for leave of absence or refusing requests of a certain nature. The legislation has placed discretion upon Head Teachers and therefore Head Teachers should not be seen to renounce this discretion by implementing such a policy. If Head Teachers were to use a blanket policy, it could potentially amount to an unlawful impeding of discretion under administrative law principles. The Attendance Compliance and Enforcement Service can support schools through:

provision of **advice**

**liaison** with Legal Department

**support** with legal process where circumstances merit it.

**Each application should be considered on a case by case basis and on its own merits.**

### 3. Do parents have to complete the Application for Leave of Absence form?

The Regulations do not state how, or what form, a request for leave of absence must be received. However, the ACE Service recommends it is good practice that parents are encouraged to complete and submit the Leave of Absence form. The form within the ACE pack has been agreed with the WCC Legal Services. If Head Teachers accept verbal requests it is essential to keep accurate notes of any conversations with parents including details of the exceptional circumstances that they provide, dates and times of those

conversations and what was discussed. Regardless of the method of how the request is received, decisions should be communicated to parents in writing outlining the reasons for the decision using the documents provided by the ACE service.

#### 4. How will parents hear about the Leave of Absence regulations?

This is a topic which has been widely reported within the media since its introduction in September 2013. However, it is important that schools use their communication channels to inform parents about the regulations and school processes eg. Attendance Policy, Website, prospectus, newsletters, assemblies.

Schools will be required to provide evidence of communication with parents within the relevant academic year to the ACE Service and prior to an FPN being issued.

#### 5. What do I say to parents who think they have a right to take a holiday in term-time?

It has never been a right for parents to take their children on holiday in term-time. The 2006 regulations allowed for a Head Teacher to grant a leave of absence to enable a child to go on holiday where the Head Teacher considered there to be 'special circumstances'. The decision to grant that leave of absence has always been at the discretion of the Head Teacher. The amended 2013 regulations remove the reference to "holiday" and make it clear that the Head Teacher can only grant a leave of absence if they consider there to be exceptional circumstances relating to the application. Schools may wish to refer parents to the school's Attendance Policy and other communications which clearly explain the school's position.

#### 6. Are parents who work within the Emergency Services an exception?

Those parents working within the Emergency Services *may* have their holiday patterns dictated to them by their employer. There is no provision within the regulations or any guidance which stipulates that Emergency Workers can be considered as an exception to the rule. As previously stated, the regulations are clear it is for the Head Teacher to decide what constitutes an "exceptional circumstance". An application submitted by a parent who works within the Emergency Services should be considered on its own merits and the reasons within that application and any evidence provided by parents to support their request. Head Teachers and those persons delegated should exercise their discretion accordingly in relation to each application.

#### 7. What do we do if parents make applications for leave for children in different schools?

The Application for Leave of Absence form takes this into account by asking parents to include information about siblings and their schools. This will give Head Teachers, or their delegated staff, the opportunity to share perspectives and hopefully present a consistent approach to the exceptional circumstances given by the parent(s), bearing in mind that decisions should be made on a case by case basis on its own merits.

Schools with siblings in the same school need to take care to ensure that a consistent approach is adopted and this may involve one person having the delegated authority and oversight of applications across the whole school to ensure good communication.

#### 8. What do I do if parents tell me that they have already booked a holiday?

Parents should be reminded that they should not be booking holidays in term-time. They should be informed that they are required to submit a request for Leave of Absence which will be considered on the basis of the exceptional circumstance contained within it and in accordance with the legislation.

#### 9. What do I do if the parent claims the pupil was ill during the Leave of Absence period and therefore off school due to illness not Leave of Absence?

School should contact the parent throughout the period of absence in line with their absence procedures. Medical evidence can be requested in line with school's procedures. This information must be gathered in a timely manner, including details of conversations held with parents. If no medical evidence is provided by parents for the period in question and the school are satisfied the absence is due to the original request then the school are advised to inform parents that the absence will be recorded as unauthorised and that it could result in a FPN. All evidence and information, including records of discussions, must be shared with ACE. It will then be reviewed and determined if there is sufficient evidence to issue a fixed penalty notice.

#### 10. Do the regulations apply to a child who is not of compulsory school age?

No. The regulations only apply to children of compulsory school age. Parents of those children at school who are not of compulsory school age should be encouraged to apply for a Leave of Absence in the same manner as all other parents within the school. For consistency, the Head Teacher should consider that application in the same way as all other applications. A Leave of Absence application/request for a child of non-compulsory school age can be refused and those absences recorded as unauthorised. However the offence of failing to secure a child's regular attendance at school (s.444 Education Act 1996) is only applicable to those children of compulsory school age and therefore the Local Authority cannot prosecute (either via FPN or court proceedings) the parent for the offence.

#### 11. Who can submit an application for a leave of absence?

The law only permits schools to consider applications for leave which are made by the parent with whom the child normally resides (resident parent). Any applications received from non-resident parents cannot be considered and the non-resident parent should be notified of this using the appropriate model letter provided by the ACE Service. It is very important that the school does not become embroiled in parents' domestic situations.

#### 12. Under what authority are Fixed Penalty Notices for non-school attendance issued?

Fixed Penalty Notices for unauthorised absence are issued in accordance with Warwickshire County Council's (WCC) Code of Conduct for Penalty Notices (the code). The code ensures that Fixed Penalty Notices are applied consistently and fairly. Fixed Penalty Notices will not be issued unless the ACE Service are satisfied the evidential requirements set out in the code can be satisfied and there is sufficient evidence to prove an offence under Section 444 of the Education Act has been committed. A copy of the code can be found at the following address: <http://www.warwickshire.gov.uk/pupilnonattendance>

13. Who may be prosecuted if the leave of absence is refused and the child is absent during that period (unauthorised)?
- Any person defined as a 'parent' in accordance with the Education Act 1996 can be considered for prosecution for an offence of failure to secure their child's regular attendance at school. This includes all natural parents, persons with parental responsibility or those who have day to day care of the child. Fixed Penalty Notices are issued to EACH absent child, therefore the aforementioned fine will apply to EACH parent and EACH child.
14. I am aware an FPN has been issued to a parent and it is due to expire soon. Should I contact the parent and remind them it needs to be paid?
- No. FPNs are issued by the Local Authority as an alternative to prosecution where it is deemed to be appropriate in line with the terms set out in the code. Once payment is made in respect of the Fixed Penalty Notice, a parent has admitted their liability for the offence. Parents should not be encouraged by the school or the Local Authority to pay the FPN and thus admit their guilt. Parents should make their own decision, taking their own independent legal advice should they so wish.
15. Where does Revenue from payment of Fixed Penalty Notices go?
- The revenue collected from the payment of Fixed Penalty Notices is used by the Local Authority for the purposes of issuing and enforcing penalty notices and prosecuting recipients who do not pay, in accordance with the legislation. It is unlikely that revenue will be greater than enforcement costs. If revenue is greater than enforcement costs that sum is held by central government. (The Education (Penalty Notices) (England) Regulations 2007; regulation 23)
16. Once a parent has paid an FPN, can they lodge an appeal?
- There is no statutory right of appeal. Once the notice has been issued, the parent can make representations to the ACE Service as to why they believe it ought not to have been issued. Once payment is made in respect of the Fixed Penalty Notice, a parent has admitted their liability for the offence.
17. If an FPN is issued and the parent fails to pay within the required timeframe, what will happen?
- If payment is not received within 28 days, the FPN will expire. At this point, the Local Authority is required to consider prosecution for the unauthorised absence. The prosecution is not for the non-payment of the notice but is for failure to ensure regular attendance at school.
18. If prosecution proceedings are instigated who will need to provide evidence?
- A witness statement will need to be provided by whoever considered the request for the leave of absence, made the decision and communicated this decision to parents i.e. the Head Teacher or the person with delegated responsibility. It is preferable that these functions are carried out by the same person. It is important that all information submitted within the witness statement is accurate and can be relied upon at a later date, particularly as it can be challenged in the legal arena. Persons responsible for considering leave requests must keep detailed records of any conversations with the

parents in relation to the application. All actions taken by the school and the ACE Service, including verbal communication with the parents in relation to the request, will form part of the evidence upon which the Local Authority will seek to rely. Once the matter is at this stage, all information pertaining to the request will be subject to legal scrutiny and is considered to be relevant. Accurate record keeping is vital and will assist not only the Local Authority in pursuing the case but can be used as a reference when schools are completing witness statements.

19. Some families have received FPNs for LoA whilst others haven't. How do I respond when parents query this with schools?

Each LoA application/request should be considered individually and on its own merits. Whilst the decision to issue an FPN lies with the Local Authority, both the school and the Local Authority are prevented from discussing matters or proceedings relating to other people. To do so would be in breach of the Data Protection Act 1998.

20. Will the recent ruling in the High Court Appeal of *Isle of Wight v Platt* prevent me from refusing a LoA application?

No. The recent and highly publicised case of *Isle of Wight v Platt* has not changed the law in relation to authorising a Leave of Absence. This is still a matter for the school's discretion, and leave of absence can still only be authorised where there are deemed to be exceptional circumstances relating to that application. The ruling will, however, affect whether the Local Authority can bring prosecution proceedings (either via FPN or court proceedings) against those parents who choose to take their children out of school where a LoA has not been authorised. The ruling made it clear that the "wider picture" of a child's attendance record can and should be taken into consideration. An unauthorised LoA absence does not automatically amount to "regular" non-attendance. The Local Authority must work within the current law as it stands. Each case of unauthorised LoA will be assessed by the Local Authority and on its own facts.

The ACE Service can provide advice and support to schools in the Leave of Absence process either via [acestatutoryreferral@warwickshire.gov.uk](mailto:acestatutoryreferral@warwickshire.gov.uk) or alternatively 0845 1550990.

(Please see process map distributed with this pack and WCC Code of Conduct).