

School Attendance – the law (www.childlawadvice.org.uk)

What sanctions can be put in place for non-attendance?

Parents can be issued a Fixed Penalty Notice by the Local Authority for their child's non-attendance. The penalty is £60 and this rises to £120 if paid after 21 days but within 28 days. Each Local Authority should publish a 'Code of Conduct' for Fixed Penalty Notices. The Principal decides if they wish to fine unauthorised absences from school by issuing a Fixed Penalty Notice. The Principal then requests by a referral to the Local Authority to issue a fixed Penalty Notice on his or her behalf.

There is no right of appeal against a Fixed Penalty Notice. If this is not paid, the Local Authority can proceed to prosecution or withdraw the notice. The Local Authority can also prosecute parents for non-attendance without issuing a Fixed Penalty Notice. Only the Local Authority can prosecute parents and they must fund all associated costs. Local authorities must conduct its investigations in line with the Police and Criminal Evidence Act 1984 (PACE).

If a registered pupil of compulsory school age fails to attend school regularly, the parent could be guilty of an offence under section 444 Education Act 1996. In April 2017, the Supreme Court held that attending school "regularly" means attendance in accordance with the rules prescribed by the school and not "sufficiently frequent attendance". This means that a child must attend school on every day that the school requires him or her to do so and failure to do this may lead to the commission of an offence.

There are 2 offences:

1. Section 444(1) Education Act 1996 – If the child is absent without authorisation then the parent is guilty of an offence. This is a strict liability offence i.e. all that needs to be shown is a lack of regular attendance. Sanctions can include a fine of up to £1,000.
2. Section 444(1A) Education Act 1996 – an aggravated offence. If the child is absent without authorisation and the parent knew about the child's absence and failed to act then the parent is guilty of an offence. Sanctions can include a fine of up to £2,500 and a prison sentence of up to 3 months.

There are some limited defences to these offences:

The head teacher authorised the absence.

The child could not attend because of sickness or 'unavoidable cause' in an emergency. Case law has held that stress arising from bullying, behavioural or mental health difficulties or a 'chaotic lifestyle' should not be considered an 'unavoidable cause'.

The child was absent on a day exclusively set apart for religious observance.

The school is outside of the statutory walking distance of the child's home and the Local Authority has a duty to make travel arrangements in relation to the child under and has failed to discharge that duty

The child is not registered at the school and the parents are providing a suitable alternative education.

The parents' trade or business requires them to travel from place to place.

Parents can also be prosecuted by Local Authorities under section 103 Education and Inspections Act 2006, where a pupil of compulsory school age who remains on the Admissions Register is found in a public place during school hours, after being excluded from school. Sanctions can include a fine of up to £1,000.

I have received a summons to the Magistrates Court – what should I do?

If you have received a summons for court for one of the above offences, you should seek the advice of a criminal solicitor and check whether you qualify for criminal legal aid. Some courts can provide duty solicitors, who may be able to advise and represent you at a hearing, usually if there is a risk of imprisonment.

We are unable to provide much information or advice once a summons has been issued as the matter is then covered by criminal law and not education law.

Can I ask for help in getting my child to attend school?

If you are finding it difficult to get your child to attend school, you can ask the Local Authority and school to help you. You can agree a plan to help improve your child's attendance which can result in drawing up a "Parenting Contract" under s.19 Anti-Social Behaviour Act 2003. This is a voluntary agreement between you and the Local Authority or school governing body to encourage school attendance. The agreement should include:

- a statement by the parents that they agree to comply for a specified period with whatever requirements are set out in the agreement; and
- a statement by the LA or governing body agreeing to provide support to the parents for the purpose of complying with the agreement.

The agreement is not legally binding as such but can be used as evidence if the Local Authority later decides to prosecute. The Local Authority or governing body should fund any support needed to implement the Parenting Contract e.g. a requirement to attend parenting classes.

What is a Parenting Order?

The court can impose a Parenting Order following a successful prosecution for irregular attendance or failure to follow a School Attendance Order. A Parenting Order can also be made up to 6 months after a Parenting Contract has been entered into.

The court can also impose an order on its own, if the Local Authority or governing body apply for this within 40 school days of a child's serious misbehaviour or review of a child's exclusion. The order will:

- require parents to attend parenting classes for up to 3 months, to support them in improving the child's behaviour;
- require parents to comply with other conditions, for up to 12 months.
- Parents have a right of appeal against an order to the Crown Court.

A responsible officer from the school or Local Authority will supervise the order. Breach of the order without reasonable excuse can lead to a fine of up to £1,000. The police can enforce the order.

What is a School Attendance Order?

If the Local Authority is not satisfied that the parents are providing a suitable education to a child of compulsory school age and it is appropriate for the child to attend school, they can apply for a School Attendance Order under section 437(3) Education Act 1996.

The order will require the child's parents to register the child at a named school. Failure to comply with a School Attendance Order amounts to an offence which the parent can be prosecuted for.

What if a parent does not comply with a School Attendance Order?

If the parents do not register the child at a school after the School Attendance Order has been issued, the Local Authority may choose to prosecute. The case will then go to the Magistrates Court and the parent(s) will be given the opportunity to show that a suitable education is being provided.

If the Court find that the education provided is not suitable, parents can face a fine of up to £1000. If the parent(s) are acquitted, the Court can direct that the School Attendance Order be discharged and no longer in force.

What is an Education Supervision Order?

The Local Authority can apply for an Education Supervision Order under section 36 Children's Act 1989 if it believes a child of compulsory school age is not being properly educated. This can include irregular attendance at school.

Under the Education Supervision Order, a supervisor will be appointed for the child who will advise, assist, befriend and give directions to the child and their parents to ensure that they are properly educated.

The directions of the supervisor will override any obligation placed on the parents under section 7 and section 444 of the Education Act 1996

When can a child's name be removed from the school roll?

A school can only remove a child's name from the school roll in particular circumstances, as set out in Regulation 8 of Education (Pupil Registration) (England) Regulations 2006.

The school has to inform the Local Authority under Regulation 12(3) Education (Pupil Registration) (England) Regulations 2006 of any pupil who is going to be removed from the admissions register where:

- the child will be home educated;
- the child has moved away and no longer attends school;
- the child has a medical condition and is certified as unlikely to be in a fit state of health to attend school;
- the child is in custody for more than 4 months and it is not reasonably believed he/she will return to school;
- the child has been permanently excluded.

