

# Attendance Compliance Enforcement Service

## Leave of Absence in Term-time – changes to 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. 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.*

**2. Should I have a policy outlining the particular circumstances that 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 and 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. Can a Fixed Penalty Notice (FPN) be issued for a 2 day unauthorised leave of absence during term-time?

*In principle, yes it can. If the FPN is not paid, the Local Authority is obliged to prosecute parents for failing to ensure regular school attendance. The decision to instigate any prosecution proceedings will be made in liaison with Warwickshire County Council's (WCC) Legal Services.*

4. 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 recommend it is good practice that parents are encouraged to complete and submit the enclosed form. The form within this pack has been agreed with the WCC Legal Services. If Head Teachers accept verbal requests it is important to keep accurate notes of any conversations with parents and details of the exceptional circumstances that they provide. Regardless of the method of how the request is received, decisions should be communicated to parents in writing outlining the reasons for the decision.*

5. How will parents hear about the change to the regulations?

*Parents may pick up information through the national press but it is important that schools use their communication channels to inform parents about the new regulations and school processes eg. Website, prospectus, newsletters, assemblies. Evidence of communication to parents within the relevant academic year will be requested by Legal Services in cases where legal procedures are instigated.*

6. If legal action is taken who will need to provide evidence?

*A witness statement will need to be provided by whoever considered the request for leave, made the decision and communicated this decision to parents i.e. the Head Teacher or the person with delegated responsibility. The ACE Service will provide advice and support to schools. (Please see process map distributed with this pack and WCC Code of Conduct).*

7. 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 circumstance relating to the application. Schools may*

wish to refer parents to the schools Attendance Policy and other communications which clearly explains the schools position.

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

*The enclosed 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.*

9. 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 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.*

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

*The regulations only apply to children of compulsory school age. A child is deemed to be of compulsory school age from the term following their 5<sup>th</sup> birthday. A child then ceases to be of compulsory school age on the last Friday in June in the academic year that they turn 16.*

11. Who can apply for a leave of absence?

*Applications for leave can only be made by the resident parent.*

12. Who may be prosecuted if the leave of absence is unauthorised?

*The resident parents/carers AND the non-resident parent/carer can be prosecuted if the non-resident parent/carer is taking the pupil on the leave of absence.*

13. Is the Holiday Calculator still a valid tool?

*No it is no longer valid.*

14. Where does Revenue from payment of Fixed Penalty Notices go?

*The revenue collected from the payment of Fixed Penalty Notices, in accordance legislation, is used for the purposes of issuing and enforcing penalty notices and prosecuting recipients who do not pay.*

15. I have paid the FPN can I now appeal?

*No. Under Section 444 Education Act 1996, an offence occurs if a parent fails to secure regular attendance at school and the absence is not authorised and none of the statutory defences apply. A Fixed Penalty Notice is issued as an alternative to prosecution proceedings for the offence period. Once payment is made in respect of the Fixed Penalty Notice, a parent has admitted their liability for the offence.*

News release..... School Attendance: Statutory Guidance and Departmental Advice published by DfE 30<sup>th</sup> August 2013 (see link below) <http://media.education.gov.uk/assets/files/pdf/s/guidance%20and%20advice%20on%20school%20attendance%20-%20updated%20aug13%20-%20final.pdf>. H and G codes have remained for authorised and unauthorised leave of absence. The F code is discontinued.