

Leave in Term Time (Penalty Notice) Process

(Covid appropriate)

Step by Step Guide

November 2020 (for the 2020/21 academic year only)

Education Legal Intervention Team (ELIT)

Alternative Provision, Attendance, Independent Education and Exclusions Service



The Leave in Term Time (Penalty Notice) Process Step-by-Step Guide

Please note that this process is in relation to children of compulsory school age only

Schools are responsible for monitoring their pupils' attendance and, where appropriate, the Local Authority has a duty to prosecute parents in the Magistrates Court for failing to ensure their child's regular attendance at school. A Penalty Notice is an alternative to a prosecution. It requires the parent(s) to pay a fixed amount as a fine for their child's irregular attendance to avoid a court appearance.

The Leave in Term Time (Penalty Notice) Process was developed to work **in conjunction** with other legal processes such as FAST-track to Attendance (which aims to reduce on-going absence), in order reduce the unauthorised leave taken by pupils in term time.

Who do we prosecute?

Definition of Parent: Section 576 of the Education Act 1996:

A 'parent' in relation to any child or young person, includes any person:-

- a) all natural parents, whether they are married or not;
- b) who is not a parent but who has parental responsibility for him; or
- c) who has care of him.

Parental partners can be included (whether or not they are married or the natural parent of the child) as they have 'care of' the child. If a pupil lives with a grandparent or older sibling as their main carer they can also be included.

For this process only, separated parents who do not accompany the other parent on the unauthorised leave should not be included. If you have details of a parent but have had no contact with them, contact the Education Legal Education Team for advice.

When does the Local Authority take legal action under this Process?

- a pupil has been taken on an unauthorised "leave of absence" from school or a place of alternative educational provision for minimum of 20 continuous sessions, or;
- a pupil has had a minimum of 12 sessions of unauthorised absence in the previous 12 calendar months (this can be a mixture of O, G and U codes, not to include the period of school closure due to Covid-19 from 16th March 2020 to the end of the Summer term 2020 or the first half term of the new 2020/21 academic year up to 23rd October) and has then been taken on an unauthorised leave of absence from school or a place of alternative provision for a minimum 8 sessions (G codes); and
- the school or place of alternative educational provision have followed the relevant local authority legal intervention process,

IMPORTANT INFORMATION. Any N codes must be converted into O or G codes in order for legal action to be taken. *If a child is in quarantine after returning from a country where this is required due to Covid risks, code X should be used for that period only. The quarantine period cannot be*

included in the unauthorised absence calculation. Prior to that whilst the child is on unauthorised leave, the registration code used would be code G which can be included.

Head teachers should ensure within their school:

- all staff are aware of the Leave in Term Time (Penalty Notice) Process;
- all attendance registers are completed accurately;
- accurate and quality personal data is created, used and shared with the Local Authority, e.g. the correct details of children and parents, etc.;
- the outcomes of the Leave in Term Time (Penalty Notice) Process are publicised, without breaching GDPR rules.

Please Note: All requests for legal action should be forwarded to the Education Legal Intervention Team who will then decide whether to issue a penalty notice, or in the case of unauthorised leave of four weeks or more, whether the case should proceed directly to Court.

The 'Six Month Rule'

Schools are advised to ensure that any legal intervention relating to pupil attendance is not allowed to drift, and that referrals are timely. The Local Authority is limited by the 'six month rule' which states that the Magistrates' court must be informed of an offence by issuing a charge, summons, postal requisition or a complaint within 6 months of it being committed. The Local Authority must have referrals no later than 4 months after the start of the leave. Any referrals should be made as soon as the child returns to school. Late referrals may be rejected.

General rule s.127 Magistrates' Court 1980

'(1)... a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.'

Getting Started

The whole school 'School Attendance' letter – sent once per academic year:

- the whole school letter (the same as that used for FAST-track) should be sent to all of the school's parents. It may be used in evidence but mainly it is good practice that parents understand the expectations of the school;
- **the letter should be sent out to each household via email' or 'pupil post'**. If parents live at different addresses and the school hold this information, send a copy of the letter to each address;
- the school should post the letter on their website and consider including it in any prospectus and information for new parents
- **this is the ONLY letter that can be signed electronically by the Head Teacher**
- the school should be prepared to answer any parental queries arising from this letter
- letters can only be signed by the Head teacher but all other parts of the process can be undertaken by the member of staff who usually liaises with the Education Legal Intervention Team (the designated liaison person)

The Process

Step One – send a ‘Leave Denied’ letter. Either:

- ✓ LD1 Letter – If the parent has applied in writing or verbally for leave and the school cannot authorise that leave, the Head Teacher should send the ‘Head Teacher request denied’ letter immediately. This letter can be used even if the parents notify you directly after they have commenced the leave:
- ✓ LD2 Letter – If the school have not heard from the parent directly (a friend or relative might have contacted you); the child has not returned from leave on the dates agreed; or the child has returned from a period of absence and you suspect the child has taken unauthorised leave in term time the Head Teacher should send the ‘leave taken’ letter immediately.

IMPORTANT

- Whichever LD letter is used, it should be on a school letterhead, **signed by the Head Teacher only**, and include the contact telephone number;
- Do not use electronic signatures, letters **must not** be signed on someone’s behalf (p.p.)
- Send a separate letter to each parent in a separate envelope and address letters using parents full names, **do not address them to the ‘parent of’ or ‘Mr and Mrs XXX’**;
- Make sure the school has or obtains the parents full names and that addresses and postcodes are correct; the Local Authority will also require the parents DOBs, which can be found:
 - on the templated leave request form;
 - on free school meal forms;
 - from the parents themselves, either in person or via telephone.

If the school is unable to obtain the DOBs prior to requesting a Penalty Notice, do not allow this to delay the Process, as the school can send this information later, via email.

- **All letters must be signed then photocopied along with other relevant documents sent to the parent. The originals should be posted (first class not recorded delivery) to the parent and the copies retained for evidence.**
- All correspondence, as well as notes and reports documenting all contacts, including telephone calls, and arrangements made with parents, are retained;
- A record of the letters posted is retained, including individual names and addresses being added to a Postage spreadsheet and the exact date that the letter was sent specified

Step Two - once the child has returned from leave complete an online referral form. You can include both parents, if applicable, on the one form. Please include the following documents scanned onto one PDF attachment to the *Education Legal Intervention Team*:

- photocopies of all signed letters
- photocopies of any ‘leave request’ documents (if any),
- photocopies of any travel documents supplied by the parents
- up-to-date attendance printout for this academic year showing that the offence has been committed and that the child has returned to school
- an attendance printout of the previous academic year

The online referral form can be accessed via this link:

<https://www.birmingham.gov.uk/LITT-FT-FORM>

Please Note:**The Local Authority cannot take legal action against:**

- **parents if their child is not of compulsory school age;**
- **itself, if the pupil is a looked after child and the Local Authority is their corporate parent.**

Education Legal Intervention Team actions:

- Penalty Notices will be issued as soon as possible;
- Penalty Notices are issued to each parent for each child;
- the Team will inform the school, via email, as soon as payment is received from a parent;
- where penalty notices have been issued previously, the Team may proceed the case direct to Court and, via email, will advise the school of this;
- where unauthorised leave of four weeks or more is taken, the Team may proceed the case direct to Court and, via email, will advise the school of this.

Please Note:

- **the Team does not send reminders to parents regarding payment and there is no facility for parents to pay a Penalty Notice in instalments; and**
- **parents should be asked to send any queries following a Penalty Notice to the Education Legal Intervention Team, in writing or by email - the address is on the Penalty Notice.**

Timeline for Actions

**PN Calendar
Day 1**

**Penalty Notices issued
£60 fine per parent per child**

The Education Legal Intervention Team will email a copy of the Penalty Notice for the school to check, please contact the Team immediately, via email, if there are any errors

**PN Calendar
Day 21**

The Education Legal Intervention Team will advise the school what witness statements are required.

**PN Calendar
Day 22-28**

£120 Deadline

If the Penalty Notice has not been paid by Day 28, parents are generally prosecuted under section 444(1), the Education Act 1996. If this is necessary, the Education Legal Intervention Team will contact the school, usually by Day 21, and ask the Head Teacher to prepare a witness statement.

The Head Teacher may be required to appear as a witness at a trial if the defendant pleads 'not guilty'. Further information will be sent to the school about this at that time.

Factors that could prevent a case from proceeding:

- incorrect coding on the *Attendance Certificate*;
- evidence that includes incorrectly recorded information, such as telephone calls or other arrangements with parents;
- mistakes in correspondence sent to parents;
- cases which fail the 'public interest' test:
- evidence that is more than 6 months old.

Please respond to emails from the Education Legal Intervention Team by return, to enable the Team to comply with time limits for these legal proceedings.

Publicise outcomes

The Leave in Term Time (Penalty Notice) Process is a community initiative that raises parents and pupil awareness of the importance of school attendance. It is paramount that the school publicises the outcomes of the Process, as this demonstrates that the school and the Local Authority take attendance seriously.

Do not identify individual names of parents or pupils.

The Education Legal Intervention Team will write to the school with an outline of the results when each case has concluded. These results can be shared with the school's population in a number of ways:

- sending out the results via a letter to parents
- in a regular newsletter distributed by the school;
- presenting the results at parent's evenings;
- including the results as an agenda item for School Governors' meetings; or
- including on the school's Attendance Notice Board.

To make the most of the Leave in Term Time (Penalty Notice) Process, use all of the above!

Please forward copies of all methods used publicise the results to the Education Legal Intervention Team for the Local Authority's records and evaluation.

Education Legal Intervention Team details

[Email: Attendance@birmingham.gov.uk](mailto:Attendance@birmingham.gov.uk)

ONLY IF URGENT: 0121 464 8979

Education Legal Intervention Team
P O BOX 16524
Birmingham
B2 2FP

Subsidiary Guidance

Section 444(1) of the Education Act 1996 states:

'If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence'

This is essentially a strict liability offence i.e. there are a limited number of statutory defences:

- sickness or any unavoidable cause;
- with leave (authorised absence);
- religious observance;
- the Local Authority have failed in their duty to support with travel arrangements if the distance from home to school dictates that they should do so.

NB: Please ensure that the school has the relevant forms *Application for assistance with travelling expenses between home and school* available regarding travel assistance to offer to parents.

Please Note:

Schools may have enquiries from parents during the Leave in Term Time (Penalty Notice) Process. If so, make a note that they have contacted the school, the advice given to them **and confirm this with a letter to the parent; always keep a photocopy of the original signed letter, as evidence.** If this occurs after a penalty notice has been issued please then refer them to the Education Legal Intervention Team who will try to answer their query.

In the notes be factual, do not state opinions (i.e. Mrs Simpson was rude) instead say what actually happened. Do not include information from other people, as this is hearsay evidence and cannot be included in the legal proceedings.

The Education Legal Intervention Team can supply a Data Sheet, which can be used to input data and use it as a mail merge for all letters. This will make it easier and less likely for mistakes to be made. *Mail Merge Guidance for Schools* and *Postage Record Sheets* are also available, upon receipt of an email request. This is useful if there are two parents and more than one child.

If leave is requested due to family illness, it may be acceptable to request medical evidence for confirmation which may help determine whether or not the leave is granted due to exceptional circumstances. Please retain copies for the school's records.

Education Supervision Order (ESO)

Before a prosecution commences the school and Local Authority (LA) must consider whether an Education Supervision Order would be more appropriate.

What is an ESO?

The LA may apply to the Family Proceedings Court for an ESO, this requires the LA to appoint a named supervising officer to work directly with the child and his or her family, usually for up to a year to resolve any issues.

Why the LA must consider an ESO?

The LA is required by section 447 of the Education Act 1996 to consider applying for an ESO before instituting criminal proceedings under section 444 of the Act. It is extremely important that

this duty is properly complied with, as more than one LA has been known to have failed to secure a conviction against a parent charged under section 444 on the basis that they were unable, when challenged by the parent's solicitor, to provide evidence to prove that an ESO had been considered.

Reasons why it may be decided that it is inappropriate to pursue an ESO?

There are some situations in which an ESO is less likely to be effective, for example, where parents are not willing to accept such intervention and are therefore unlikely to give their full cooperation to the LA in whose favour the Order is made. In these circumstances, instituting proceedings under section 444 of the Education Act 1996, may be considered to be the more appropriate course of action. Basically, this means that unless a parent is fully co-operating an ESO is not suitable.

If the school believes that an ESO may be appropriate then it is essential that the school inform the Attendance and Court Team immediately via email, and the Team will discuss it with the school:

Attendance@birmingham.gov.uk