School attendance and absence

This page provides information about the law on school attendance and the powers of the Local Authority in enforcing school attendance.

The Department for Education has published revised guidance on school attendance and absence titled ‘[**Working together to improve school attendance**](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1099677/Working_together_to_improve_school_attendance.pdf)‘ which came into effect on the 1st September 2022. This page has been updated to reflect the new guidance.

What is compulsory school age?

A child is of compulsory school age at the beginning of the 1st term after their 5th birthday, so:

* children who turn 5 between 1st January and 31st March will be of compulsory school age at the beginning of the school term after 31st March;
* children who turn 5 between 1st April and 31st August will be of compulsory school age at the beginning of the school term after 31st August;
* children who turn 5 between 1st September and 31st December will be of compulsory school age at the beginning of the school term after 31st December.

A child remains of compulsory school age until the last Friday in June in the school year that they turn 16. From September 2013 all 16 year olds had to remain in education or training until the end of that academic year and from September 2015 they were required to continue until their 18th birthday.

Who is considered a parent in education law?

Both biological and adoptive parents would be considered “parents” in Education Law. However, [**Section 576 Education Act 1996**](http://www.legislation.gov.uk/ukpga/1996/56/section/576) defines a ‘parent’ widely to include:

* a biological parent of the child (even if they do not have Parental Responsibility and even if the child does not reside with that parent);
* any person who is not a parent but has Parental Responsibility for the child (for example through a Residence Order, Child Arrangements Order, Special Guardianship Order, Step-Parental Responsibility Order);
* someone who has care of the child.

Therefore, all these people have the duty to ensure their child of compulsory school age receives a suitable education. This does not mean that the child has to attend a school – it is possible to fulfil this duty by home educating the child. Please refer to AfC’s information on Elective Home Education for more information.

Where parents decide to have their child registered at school, they have an additional legal duty to ensure their child attends that school regularly. This means their child must attend every day that the school is open, except in a small number of allowable circumstances such as being too ill to attend or being given permission for an absence in advance from the school.

What is a suitable education?

The education must be:

* **full-time**;
* **efficient** – the education must achieve what it sets out to achieve;
* **suitable** – to their age, ability and aptitude and any special educational needs they may have. The education must equip the child for life within the community and must not limit a child’s options in later life.

What is the law on school attendance?

All schools, including independent schools, must maintain an **Admissions Register** and all schools except boarding schools must have an **Attendance Register**. [**The Registration (Pupil Registration) Regulations 2006**](http://www.legislation.gov.uk/uksi/2006/1751/regulation/5/made) require a school to put the child’s name on the Admissions Register on the first day that the child is expected to attend school. If the pupil does not attend, they will be recorded as absent – this can be authorised or unauthorised.

A school will authorise an absence if: Please see [guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1099677/Working_together_to_improve_school_attendance.pdf) for additional details.

* the child is too ill to attend and the school accepts this as valid (Code I). *Schools should authorise absences due to illness unless they have genuine cause for concern about the veracity of an illness. If the authenticity of illness is in doubt, schools can request parents to provide medical evidence to support illness. It should be noted that GPs do not provide sick notes for schoolchildren. When children are absent from school owing to illness, schools may request a letter from a parent or guardian, and this is no different during an exam period. However, children who have missed exams due to illness are frequently told by schools that a note from a doctor is required; but this cannot be provided by a GP. Aside from the fact that parents/guardians are responsible for excusing their children from school, GPs cannot provide retrospective sickness certification. When a child suffers from a long-term condition, any certification will be provided by the responsible specialist).*
* the parent has got the advance permission of the school e.g. for a holiday, religious observation;
* the child has a medical or dental appointment; (Code M)
* the child is on study leave; (Code S)
* the child is being educated off-site; (Code B)
* the child has been suspended/excluded but no alternative provision made (Code E).

Schools have to regularly inform the Local Authority of any pupils who are regularly absent from school, have irregular attendance, or have missed 10 school days or more without the school’s permission. Only exceptional circumstances warrant a leave of absence. Schools should consider each application individually taking into account the specific facts and circumstances and relevant background context behind the request. If a leave of absence is granted, it is for the headteacher to determine the length of the time the pupil can be away from school.

Schools also have a safeguarding duty, under [**section 175 Education Act 2002**](http://www.legislation.gov.uk/ukpga/2002/32/section/175), to investigate any unexplained absences.

Can a parent book a holiday during term time?

Head teachers will only authorise holiday during term-time in exceptional circumstances. Parents should put their request in writing to the school as soon as possible. If they go on a holiday without the authorisation of the head teacher, they may be liable to pay a fine and/or be prosecuted for non-attendance.

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

As absence is so often a symptom of wider issues a family is facing, schools, trusts and local authorities should always work together with other local partners to understand the barriers to attendance and provide support. Where that is not successful, or is not engaged with, the law protects pupils’ right to an education and  provides a range of legal interventions to formalise attendance improvement efforts, and where all other avenues have been exhausted, enforce it through prosecuting parents. Attendance legal intervention can only be used for pupils of compulsory school age and decisions should be made on an individual case by case basis.

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’](https://www.leadershipupdate-rbwm.co.uk/education-welfare-service-202223/). for Fixed Penalty Notices. The School’s headteacher decides if they wish to fine unauthorised absences from school by issuing a Fixed Penalty Notice. The headteacher then requests this 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)**](http://www.legislation.gov.uk/ukpga/1984/60/contents).

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**](http://www.legislation.gov.uk/ukpga/1996/56/section/444). 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**](http://www.legislation.gov.uk/ukpga/1996/56/section/444) – 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**](http://www.legislation.gov.uk/ukpga/1996/56/section/444) – 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 “unavoidable cause” must mean something that affects the child and has an element of emergency attached to it, such as sudden serious illness of the child. The case law also established that parental lack of control or the parent’s chaotic lifestyle/illness does not give rise to an “unavoidable cause” for the child’s absence from school.
* 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.
* If the child has no fixed abode and the parents’ trade or business requires them to travel from place to place and the child has attended school as regularly as the nature of the trade/business permits. If the child is over 6 the child must have attended school for at least 200 sessions during the preceding 12 months up to and including the date on which the proceedings were instituted.

Parents can also be prosecuted by Local Authorities under [**section 103  Education and Inspections Act 2006**](http://www.legislation.gov.uk/ukpga/2006/40/section/103), 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.

Can a parent ask for help in getting their child to attend school?

If a parent is finding it difficult to get their child to attend school, they can ask the Local Authority and school for help. They can agree a plan to help improve their child’s attendance which can result in drawing up a "**Parenting Contract**". This can also be requested under [**s.19 Anti-Social Behaviour Act 2003**](https://www.legislation.gov.uk/ukpga/2003/38/section/19)where a pupil has been excluded on disciplinary grounds from a relevant school for a fixed period or permanently. A parenting contract is a formal written agreement between a parent and either the school (with the exception of independent schools and non-maintained special schools) or local authority to address irregular attendance at school or alternative provision. A contract allows a more formal route to secure engagement with support where a voluntary early help plan has not worked or is not deemed appropriate. A parenting contract is not a punitive tool it is intended to provide support and offer an alternative to prosecution. 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.

Where a parent does not comply with the requirements set out in the contract, the lead practitioner should contact the parent and seek an explanation and decide whether it is reasonable, and the contract remains useful. If the explanation shows that the contract is proving difficult to comply with through no fault of the parent, then a meeting should be arranged with the parent to review and amend it. Where no explanation is given, or the lead practitioner is not satisfied with the explanation, they should serve the parent with a warning to explain that the contract is not working and may be terminated, and another course of action pursued, if the parent does not engage.

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 motion or 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 issue a School Attendance Order under [**section 437(3) Education Act 1996**](http://www.legislation.gov.uk/ukpga/1996/56/section/437).

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 be 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**](http://www.legislation.gov.uk/ukpga/1989/41/section/36) 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**](http://www.legislation.gov.uk/ukpga/1996/56/section/7) and [**section 444**](http://www.legislation.gov.uk/ukpga/1996/56/section/444) of the [**Education Act 1996.**](http://www.legislation.gov.uk/ukpga/1996/56/contents)

Where parents persistently fail to comply with the directions given under the Education Supervision Order, they may be guilty of an offence. Local authorities can prosecute in the Magistrates Court for persistent non-compliance with the Order and parents (upon conviction) will be liable to a fine of up to £1,000.

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**](http://www.legislation.gov.uk/uksi/2006/1751/regulation/8/made).

The school has to inform the Local Authority under [**Regulation 12(3) Education (Pupil Registration) (England) Regulations 2006**](http://www.legislation.gov.uk/uksi/2006/1751/regulation/12/made) 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 the school and school have evidence of a new placement;
* 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.

*Taken and adapted from* [*childlawadvice.org.uk*](https://childlawadvice.org.uk/information-pages/school-attendance-and-absence/#:~:text=A%20parenting%20contract%20is%20a,at%20school%20or%20alternative%20provision.)