



BLACKBURN
with
DARWEN
BOROUGH COUNCIL

**LOCAL AUTHORITY POLICY STATEMENT
UPDATED JULY 2016**

**CONSIDERING APPLICATIONS FOR DISCRETIONARY
LEAVE OF ABSENCE DURING TERM-TIME IN
EXCEPTIONAL CIRCUMSTANCES
(INCLUDING ADVICE ON PUPILS WHO ARE UNABLE TO
ATTEND DUE TO MEDICAL TREATMENT ABROAD)**

EVERY SCHOOL DAY COUNTS AND EVERY DAY IS IMPORTANT

1. Introduction

- 1.1 The original Blackburn with Darwen policy “Managing requests for extended leave of absence from school” was published in September 2000 in response to demands from local schools for additional guidance on the management of term-time family holidays and extended leave applications, so that a more reasoned and consistent approach could be adopted across all schools in the borough.

The original policy statement was produced by a working group which included primary and secondary Headteachers, relevant local authority officers and representatives of the Lancashire Council of Mosques.

The reason for this new policy statement is to provide updated guidance which incorporates the most recent amendments to relevant statutory regulations:

- ‘Advice on school attendance’ - DfE document published February 2013
- ‘Improving school attendance’ – DfE report and recommendations produced by Charlie Taylor, the Government’s Expert Advisor on Behaviour and Attendance, published April 2012
- ‘Reducing absence – ensuring schools intervene earlier’ – DfE report produced by Charlie Taylor, the Government’s Expert Advisor on Behaviour and Attendance, published July 2011
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013
- The Education (Pupil Registration) (England) (Amendment) Regulations 2011
- The Education (Pupil Registration) (England) (Amendment) Regulations 2010
- The Education (Pupil Registration) (England) Regulations 2006
- The Education (Penalty Notices) (England) (Amendment) Regulations 2013
- The Education (Penalty Notices) (England) Regulations 2007
- The Education Act 2006

Specifically, Regulation 7 of the Education (Pupil Registration) (England) Regulations 2006 has been amended to prohibit the proprietor of a maintained school from granting leave of absence to a pupil except where an application has been made in advance by parents/carers **and** the proprietor considers there are exceptional circumstances relating to the request.

The updated policy also contains reference to the secure web-based ‘term time tracker’ system which the local authority jointly developed with Truancy Call Ltd (now part of the Contact Group) in order to improve our monitoring of any pupils who take authorised or unauthorised leave of absence in term-time.

However, in order for this new policy to succeed, it is essential that it is both formally adopted and implemented by school governing bodies, and then shared with pupils’ parents/carers and other relevant members of the wider school community.

- 1.2 This new policy document outlines some fundamental principles that will hopefully continue to support schools in their decision-making processes.

The Human Rights Act 1998 requires that schools and local authorities apply their powers fairly and consistently.

The Equalities Act 2010 placed a general duty on all public authorities, including schools and local authorities, to have regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between peoples of different racial groups.

The Race Relations (Statutory Duties) Order 2001 also places a number of specific duties on schools and Local Authorities, including a duty to assess the impact of their policies on minority groups and to monitor the operation of those policies by ethnicity and make that information publicly available.

The Children Act 2004 places a duty on local authorities to make arrangements through which key agencies co-operate to safeguard and improve the well-being of children and young persons in order to promote the five outcomes under the Every Child Matters agenda:

- Be Healthy
- Stay Safe
- Enjoy & Achieve
- Make a Positive Contribution
- Achieve Economic Well-Being

Likewise, in the case of education-related penalty notices for non-attendance (unauthorised leave in term-time or unwarranted delayed return from discretionary leave of absence without school agreement) we must also pay due regard to:

- the provisions covered in the DfE's 'Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices' (2007); and
- the revised Blackburn with Darwen, Blackpool and Lancashire County Children's Services Authorities 'Joint protocol for issuing education-related Penalty Notices.' (May 2013)

The Schools and Education directorate has also produced revised guidance and procedures in relation to supporting 'Children missing from or not receiving a suitable education' and this protocol should always be read in conjunction with the above.

The criteria adopted by schools to determine whether a request for leave of absence is approved must pay proper regard to the above equality issues, e.g. a parental request for leave of absence need not necessarily always involve a journey overseas.

- 1.3 Schools need to ensure that parents/carers have access to clear, accurate information regarding their rights and responsibilities, e.g. when granting leave of absence Headteachers **must always** clearly specify (in writing) the leave of absence period agreed with parents/carers, because if this is not stipulated, the Headteacher will not have the legitimate lawful permission to remove the pupil from the school roll if the child fails to return to school at the 'expected' (as opposed to a formally agreed) time and, if challenged, the Headteacher will be deemed by the Courts to have acted unreasonably.

Consequently, governing bodies are advised to adopt clear policies and associated guidance that can be fairly and equitably applied by Headteachers. The local authority acknowledges that some parents may still occasionally want to take their children out of school for a period of time, beyond the normal

school holiday pattern.

However, the amendments to the 2006 regulations have removed all references to family holidays, extended leave and the former statutory threshold of allowing up to ten school days leave per year for the purpose of a family holiday during term-time.

When considering applications for discretionary leave of absence, Headteachers must now:

- be satisfied that the individual circumstances warrant granting leave;
- take into account the frequency of any such requests, the pupil's attainment, overall attendance and ability to catch up on missed lessons; and then
- determine the number of days, if any, a child can be away from school.

Examples of exceptional circumstances which could justify approval include:

- members of the armed forces who are returning home from active duties
- emergency services personnel (Police, Ambulance, Fire and Rescue) who are unable to take leave at certain times of the year
- other employees who are prevented from taking family holidays outside term-time, e.g. a parent working abroad on a fixed time-period contract
- the death of an immediate family member, e.g. parent, sibling or grandparent
- an extended family that wishes to spend time together for support during a time of acute crisis
- a child or parent/carer receiving medical treatment abroad
- families who can evidence that they have experienced genuine disruption to their originally agreed return travel plans, e.g. severe weather conditions or civil unrest.

The above examples are not necessarily exhaustive.

- 1.4 The connection between educational progress and absence is complex at an individual pupil level; any negative impact might be cushioned by a number of positive factors – parental engagement, the child's knowledge and skill levels and the ability of the school to provide an appropriate level of support.

However, if children are taken out of school for a two week holiday every year and also miss the average number of days off for sickness and medical/dental appointments, then by the time they leave compulsory education at age sixteen they will have missed the equivalent of a year off school.

2. Children in our care

- 2.1 Additional processes apply when the request for discretionary leave of absence during term time is made for a child who is looked after by the Local Authority. Any application must first be approved by Service Leader- Children in Care and Children with Disabilities prior to submission to the Headteacher. The following process must be followed:
- 2.2 Formal request made by the child's social worker to their Service Leader prior to any arrangements being planned by foster carers/parents. The decision will be recorded on the child's file.

- 2.3 If the above request is approved, the child's social worker must follow the school process as outlined in their attendance policy to apply for discretionary leave of absence during term time prior to any arrangements being made by foster carers/parents:
- a) the child's social worker **must** ensure that the Headteacher is given a copy of the confirmation of the decision by the Service Leader to accompany the foster carers/parents application process;
 - b) the Headteacher will then notify both the foster carers/parents **and** the child's social worker of his/her decision; and
 - c) the child's social worker must then record the decision on the child's file and formally confirm the outcome with the foster carers/parents i.e. that permission has or has not been granted for the purpose of a holiday in term-time.

3. Pupils who are unable to attend school as a result of the child or parent/carer receiving medical treatment abroad

3.1 Background

The primary aim of educating children & young people who have medical needs is to minimise, as far as possible, the disruption to normal schooling.

Services within the Borough are well placed to support the education of children undergoing medical treatment in local hospitals and we have reciprocal support arrangements for children & young people who receive treatment elsewhere in the country. However, recent changes to the health economy now means that parents/carers have greater choice in where they and their children access treatment; including the option of seeking treatment abroad.

3.2 Regulations & guidance for coding pupil registers

In September 2006 the Department for Children, Schools and Families issued guidance to schools and local authorities on applying the Education (Pupil Registration) (England) Regulations 2006. The section on keeping pupil registers stated that schools should automatically treat illness as authorised absence and, with their local authority's help, support pupils' education throughout any illnesses, i.e. schools, local authorities and other agencies (e.g. health services) must work together to support sick children before raising the issue of deletion from the school roll.

However, the High Court has ruled that only schools, not parents or anybody else, can authorise a pupil's absence, and under the amended Education (Pupil Registration) (England) Regulations 2006 schools can still legitimately challenge parents/carers statements and/or request appropriate, additional, medical evidence, although there is no legal requirement for parents to provide a doctor's certificate **and** schools are advised not to request medical certificates unnecessarily, especially if an illness was not treated by a doctor at the time.

3.3 Procedure to be followed by Headteachers when considering requests from parents/carers to authorise the absence of a pupil in order for them to receive medical treatment abroad:

- Seek clarification from parents/carers as to whether the child has been diagnosed with a long-term or recurrent illness;

- discuss the most appropriate time to plan the treatment in order to help minimise disruption to the child's educational career, e.g. avoiding SATS and examination times;
- request the pupil's parents/carers to provide medical evidence from the child's UK hospital **consultant/paediatrician** to support approval of absence;
- ask parents for their consent to seek further advice from UK health professionals (e.g. school's health service) around potential further detriment to the child's health if the requested period of absence was not agreed and/or treatment is delayed because of concerns over the need to maintain continuity of education;
- request the pupil's parents/carers to provide (if possible/available) a letter from the hospital consultant/paediatrician in the country where the child will be receiving treatment, specifying:
 - a. the nature of the medical problem;
 - b. the type of treatment to be undertaken, and
 - c. the estimated recuperation period needed before the child can be declared fit enough to safely return to the UK;
- secure agreement from the parents/carers that they will contact the school if anything delays their expected return;
- give due consideration as to whether the child or young person is likely to be placed at more risk by being out of the country and not receiving a suitable education.

In the majority of cases, after securing parental consent, the first point of contact should be the school nurse, who will liaise with community paediatricians and/or refer on as they see fit.

3.4 **Outcome of the meeting with the parent/carers:**

- Where the request is approved, then school should notify the parents/carers in writing of the decision and confirm the agreed date by which the child will be expected to return to school. This letter should also inform the parents/carers of the actions which could be taken if they fail to return on time, e.g. issued with a penalty notice for unauthorised absence;
- if the school does not grant permission, the Headteacher should write to the parents/carers explaining the reason why the request has been refused and warning them of the potential consequences for failing to ensure their child's attendance at school, e.g. they may be issued with a penalty notice and/or their child might be removed from the school roll.

3.5 **Marking the school register**

Under the advice & guidance provided to schools and local authorities by the Department for Education (DfE) on the use of codes to record pupil attendance, a registered pupil who does not attend school for medical reasons (illness) and does not access other alternative provision should be marked in the school register as an authorised absence (Code I).

In exceptional circumstances Headteacher's can also grant permission for a child to be absent from school (recorded as C) because of the parent/carers need to travel abroad for medical treatment.

However, in the case of a pupil who is absent from school without permission, then either 'Code G' for 'unauthorised holiday' (when it's the parent/carer who

is receiving the medical treatment) or 'Code O' for 'unauthorised absence not covered by any other description' (when it's the pupil who is receiving the treatment) should be entered in the register.

4. The Legal Position

4.1 Under section 576 of the Education Act 1996 a parent is defined as:

All natural parents, whether married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

It is the responsibility of parents of registered pupils of compulsory school age to ensure that their child attends school regularly. If the child fails to attend regularly at the school then the parent is guilty of an offence under s444 (1) of the Education Act 1996.

4.2 The Education (Pupil Registration) (England) (Amendment) Regulations 2013 state that leave of absence shall not be granted unless:-

- an application has been made in advance to the proprietor by a parent with whom the pupil normally resides; and
- the proprietor, or a person authorised by the proprietor, considers that leave of absence should be granted due to the **exceptional circumstances** relating to the application

5. Education Penalty Notices for Unauthorised Absence during Term Time

5.1 Section 23 of the Anti-social Behaviour Act 2003 brought into force measures under Section 444 of the Education Act 1996 which empower designated Local Authority officers, Headteachers and the police to issue education-related penalty notices to parents/carers in cases of their children's unauthorised absence from school and the whereabouts of excluded pupils in a public place at prescribed times.

Blackburn with Darwen Borough Council has agreed an updated joint code of conduct (protocol) with Lancashire Constabulary and Blackpool Borough and Lancashire County Councils, under which all the above named partners must operate.

The issuing of penalty notices must also conform to all requirements of the Human Rights Act and all equal opportunities legislation.

5.2 To ensure consistency and equitable delivery, the circumstances in which a penalty notice can be issued include:

- Parentally condoned absence
- **Unauthorised holidays in term time**
- **Unwarranted delayed return from discretionary leave (without school agreement)**
- Persistent late arrival after the register has closed
- Parents/carers failure to make arrangements to ensure that children who

have been excluded from school due to misbehaviour are not in a public place at prescribed times during the first five school days of any exclusion.

The number of penalty notices which can be issued is restricted up to a maximum of three per pupil, per parent, in any one school year.

- 5.3 It is recommended practice to issue a formal warning (see section 4.5 above) and in such circumstances Headteachers should write to the parents/carers and remind them that their request for leave of absence has not been approved and they will face the possibility of being issued with a penalty notice for failing to ensure their children's regular attendance at school.

However, warning letters may not be issued in instances where leave of absence is either not requested by parents in advance or requested with insufficient notice for a warning letter to be sent.

- 5.4 In the case of a pupil **granted** leave of absence **but** that pupil then fails to return to school within 5 school days (10 sessions) of the agreed return date, a request to issue a penalty notice to the parents should be made to the Learning Access Manager (*unless the school is satisfied that the pupil is unable to attend the school by reason of sickness or other unavoidable cause*) via completing the form 'Request for issue of a penalty notice' (see Appendix 6b of the current 'Joint procedures for issuing education-related Penalty Notices' as updated in July 215)

- 5.5 Requests from schools to issue penalty notices for unauthorised leave of absence will always be considered by the Learning Access Manager (LAM) provided that **all** relevant information is supplied in the specified manner, i.e.

- Copy of the completed 'Application for Discretionary Leave of Absence' form (see appendix 1)
- Copy of the Headteacher's letter sent to parents/carers informing them of the school's decision
- Copy of the individual registration certificate (paper or electronic version) confirming the pupil's unauthorised absences
- 'Request for warning of penalty notice - Discretionary leave in term time' signed by the Headteacher (see appendix 2).

The LAM will then respond to all such requests for the issue of a penalty notice within 10 x school days, providing the relevant criteria are met.

6. (Extended Leave) E–Tracker System

- 6.1 The Children Act 2004 places a duty on local authorities to make arrangements through which key agencies co-operate to safeguard and improve the well-being of children and young persons to promote the outcomes under the Every Child Matters agenda.

Section 436A of the Education Act 1996 (school attendance) as amended by the Education and Inspections Act 2006 requires all local authorities in England to make arrangements to enable them to establish the identities of children residing in their area who are not receiving suitable education.

- 6.2 Over recent years, concerns have continued to be raised not only about the impact of term-time holidays on children's attendance and attainment, but also around the welfare and safety of children who go abroad on extended leave –

especially girls visiting southern Asia. This worry increases even further if children do not return to school on their expected date.

- 6.3 The implementation of our e-tracker system (developed in partnership with Truancy Call Ltd) demonstrates a clear commitment towards safeguarding a potentially large group of especially vulnerable children. It also compliments our existing LA procedures for locating children missing from or not receiving a suitable education (CME), and provides both schools and the local authority with a coherent and systematic approach to monitoring whether pupils who go abroad actually come back into the country.

Once a child's name is entered on the e-tracking system, it:

- generates a letter to the parents/carers
- produces an individual business/calling card for each secondary pupil, with a unique identification number they can use to contact us should they encounter any problems
- automatically runs daily checks

On the first 'approved' day of the absence, parents/carers receive a text message to their mobile phone, confirming the date their son/daughter is due back in school and reminding them that they should contact the education welfare team if, for any reason, the family will be returning later from their leave of absence than was agreed with the Headteacher.

In addition, any child in Year 6 or above also receives a text message to their mobile telephone, confirming the date they are due back in school and giving them a number to text into whilst abroad should they encounter any problems or are unable to make their due return date for any reason.

- 6.4 Should a child encounter any problems whilst away, they can simply send a text message to the education welfare team's Pupil Tracking and Licensing Officer and will automatically receive a confirmation receipt for this message.

The Headteacher of the school the child attends also receives an e-mail copy of the above message.

When a message is received from a child, the tracking system generates an automatic e-mail to an identified person in the education welfare team, informing them that a new message has arrived. The Pupil Tracking and Licensing Officer can then access a secure web interface, view the message and text a reply back (the school the child attends also receives an e-mail copy of this reply) and/or phone the child and add typed notes next to the child's message for future reference – thus building up an evidential time & dated record of how a message from a child who has encountered problems is dealt with.

- 6.5 The e-tracking system also creates a daily report of all those children who are due back in school on each day and send this in an e-mail to designated Pupil Tracking and Licensing Officer, who will then contact the child's school to check if he/she has returned from their holiday.

If it is discovered that a child has not returned, then the Pupil Tracking and Licensing Officer can activate a standard reminder that sends a text message to both the parent(s) and child, requesting they get in touch to provide an update on their expected return to school.

7. Schools and Education Directorate Advice & Recommendations to Headteachers and School Governing Bodies on Managing Discretionary Leave of Absence

- 7.1 Schools will need to adopt a clear policy which:
- states there is **no entitlement** for parents to take their child on holiday during term-time without obtaining prior approval from the school
 - recognises that discretion will need to be applied to each leave request according to individual circumstances
 - outlines the procedures whereby parents/carers can make applications for their child to be considered/granted discretionary leave of absence during term-time
 - acknowledges and identifies the sorts of 'exceptional circumstances' which may warrant the Headteacher granting discretionary leave of absence.
- 7.2 The local authority will continue to produce a pro-forma (see appendix 1) to standardise the leave application process. The pupil's parent(s) or carer(s) makes the application – the expression 'parent' includes any person who has parental responsibility for the child or who has care of her or him, e.g. this may include the corporate parent that the pupil resides with for children who are 'looked after' by The Local Authority.
- 7.3 If leave of absence is taken without the school's authorisation, then the absence, by definition, is unauthorised (registration codes G or O). This may result in a referral to an education welfare officer and the possible removal of the child's name from the school roll (admission register).

Headteachers may choose to apply for a penalty notice to be issued to the parents/carers if or when the pupil meets the minimum evidential requirement of 10 school sessions (5 days) lost due to unauthorised absence in the current term **or** 14 sessions (7 days) lost across two consecutive terms.

- 7.4 Parents should also be advised that if their child fails to return to school within 10 school days of the agreed return date, their child's name may also be removed from the school roll, with no guarantee of re-admission. Similarly, this 10 day period would constitute an unauthorised absence (**registration codes G or O**) and could once again result in a penalty notice being issued by the Local Authority.

The removal of a pupil's name from the school's admissions register can further disadvantage the child upon their return, e.g. loss of belonging, the amount of education lost before being enrolled at another school, and the negative effects of curricular and pastoral discontinuity. However, perhaps most importantly, it also penalises the pupil for the actions of her/his parents.

*Consequently, it is recommended that if there are reasonable grounds to believe that a pupil is likely to return to the school within the next ten school days, then in such circumstances the Headteacher should wait and the pupil's name not be removed from the school's admissions register until the unauthorised absence reaches twenty days – **although possibly sooner if notified the Learning Access Service and requested assistance to help locate the missing pupil.***

8. Additional Processes to Support the Policy

- 8.1 As part of its monitoring and support function, the local authority will:

- Investigate unauthorised absence through the education welfare team
- Maintain support for the DfE 'Lost Pupil Database' via the school 2 school (s2s) website, which keeps track of children who have been removed from the admission registers of individual schools owing to long-term absence.
- Liaise with the police and the Foreign & Commonwealth Office over safeguarding issues relating to 'missing pupils' who fail to return to school within ten school days of the agreed return date
- Circulate 'Movement of Children' enquiries to other local authorities when a pupil is removed from a school's admission register because he/she has failed to attend school within ten school days of their expected return date.

8.2 Finally, we will continue to strongly promote the message that:

EVERY SCHOOLDAY COUNTS AND EVERY DAY IS IMPORTANT