

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. 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.

Schools also have a safeguarding duty, under [section 175 Education Act 2002](#), to investigate any unexplained absences.

#### **Devon and Cornwall Police involvement**

Patrolling officers may speak to children who are truanting from school.

In addition, [Section 16 of the Crime and Disorder Act 1998](#) empowers the police to remove truants from a public place and return them to school; the Police can only remove those children who are of compulsory school age.



If you are worried about your child's attendance, please talk to your child's school first.

If you feel unable to do this or you would like further help, please contact:

#### **Education Welfare Officers**

Aison Mc-Gee Harrison

01326 372379

Alternatively speak to Emma French on Tel: 07503124593 or 01637 874532



# Attendance Fact Sheet for Parents/

2018/2019

## What the law says

The 1996 Education Act makes it very clear that parents must ensure that their child of school age receives regular, full-time education. Children must attend the school they are registered in. Only the school can authorise a child's absence. If a child is not registered or does not attend their educational provision, Cornwall Council may take legal action against the parent/carer, if appropriate.

## Who is considered a parent in education law?

**Section 576 Education Act 1996** 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, Adoption Order or Care Order);
- someone who has care of the child

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

Parents can be issued a **Fixed Penalty Notice** by the school, Local Authority or the Police, 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 Learning Academy Trust do not issue their own fixed penalty notice but refer to the Local Authority as per guidance.



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 up to 3 months.

There are some limited defences to these offences:

- The Headteacher 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.