



# Guidance for all Schools and Academies

Statutory Action for unauthorised absences 2024 / 2025

Education Welfare

Staffordshire County Council

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## INTRODUCTION

The aim of this document is to provide clear guidance to all schools on the consistent, fair and objective enforcement of legislation; outlining the responsibilities and practices for those involved in ensuring students regular school attendance and including updated guidance from Working Together to Improve School Attendance August 2024.

Every Local Authority has the responsibility for pursuing statutory action against parents for failing to ensure their child receives a suitable education. In Staffordshire, this responsibility is undertaken by the Children and Families Directorate through the Education Welfare Officers.

All schools are expected to undertake work with students and their families to improve school attendance. Statutory action (or Legal Intervention) is not undertaken lightly by Staffordshire County Council (SCC) as it remains committed to ensuring all families have an opportunity to improve their own outcomes with support from the appropriate agencies. Statutory action will be instigated when irregular unauthorised attendance is persistent, there are no known statutory defences and evidence exists to demonstrate the parent(s)/carer(s) have failed to engage effectively with the planned intervention as set out in a plan created between them and the school. This includes issuing penalty notices and prosecution for term time holidays.

Under section 7 of the Education Act 1996, the parent is responsible for making sure that their child of compulsory school age receives suitable education, through regular attendance at school or education otherwise than at school. When a child is persistently late and arriving in school after the close of registration, the parent/carers may again be guilty of an offence under the same legislation.

In this document we will focus solely on children whose parents have elected to enrol their children at a school to receive their education.



## RESPONSIBILITIES

### Who is a Parent?

The definition of a parent as set out in section 576 of the Education Act 1996 is:

- All natural parents, whether they are married or not
- Any person who has parental responsibility for a child or young person
- Any person who has care of a child or young person (i.e. lives with and looks after the child)

### Parent Responsibilities

As stated above parents have the responsibility to ensure their children attend the school provision, they have enrolled them at. If a child of compulsory school age is not receiving a suitable education by regular attendance at school or by education otherwise than at school, then the parents are committing an offence under the Education Act 1996.

The Local Authority (SCC) decide who comes within the definition of a parent in respect of a particular pupil when using the legal measures and all schools should support SCC in identifying these individuals. Generally, the definition of who is a parent, includes all those with daily responsibility for a child, whether on a full-time or part-time basis. It may also include those who do not live with the child at all, but the authority will need to consider the circumstances for each before deciding whether it is appropriate to bring proceedings against those individuals.

The parent is expected to inform the school of any issues in line with the school attendance policy of any absences and the reasons for these. All parents are expected to take reasonable steps to ensure their child can attend school; this would include contacting the school in the first instance to discuss any difficulties their child was experiencing and explore what support the school was able to offer in resolving these.

In the case of unauthorised term-time leave for recreation or holidays, SCC only issue penalty notices to the parent(s) that took the child out of school. We would therefore request this is stated on the statutory action referral and the address of the parent is verified by schools before it is submitted.



## School Responsibilities

All schools must have an attendance policy which is approved and reviewed by the Governing Body/Board of Directors. This should be promoted and made available to all parents. This policy should consider focusing on early identification and intervention to prevent a child's absence becoming an entrenched pattern or reaching such low levels that it is considered severe absence.

All schools must take the attendance register at the start of the first session of each school day and once during the second half of the school day. The school should follow up any absences to:

- Ascertain the reason for the absence / late arrival
- Ensure the proper safeguarding action is taken if appropriate
- Identify whether the absence is authorised or not
- Put in place any strategies needed to prevent further absences.
- Identify the correct code to use before entering it on to the school's electronic register or management information system

It is the school's responsibility to decide if an absence/late arrival is authorised or unauthorised in accordance with their attendance policy. The local authority can only act on unauthorised absence/late.

All schools should develop a range of letters to advise parents/carers of their concerns about their child's irregular attendance and inform them of what strategies they can together put in place to address this. These letters should remind parents of their legal responsibility in relation to their child's attendance. Schools will need a 'final warning' letter they can use if they are considering requesting a prosecution. This letter informs parents of the support that they have given, the current attendance concern and is a formal notification that they will now be referring the attendance concerns to Staffordshire County Council. This letter must be submitted with a signed registration certificate and any other supporting evidence that the school may have through the Staffordshire Learning Net portal. Full details of how to make a referral are at the end of this document.

Whilst Staffordshire County Council is undertaking statutory action, the school should continue to offer support to the family to improve attendance/punctuality and work with any other agencies who are involved.



## SUPPORT

**All schools should undertake an assessment to understand the casual factors which have contributed to the unauthorised absences.**

Staffordshire Safeguarding Children's Board (SSCB) has developed and implemented an Early Help Assessment (EHA) tool to support all agencies working with children and families in Staffordshire in this process.

Importantly the assessment will then inform a plan to address the identified issues. This plan which should be led by the school will capture the actions undertaken by all the parties involved in trying to address the irregular attendance.

Records of contact with the family should be kept, along with evidence that would demonstrate a lack of engagement or refusal to co-operate with the plan. All missed appointments, home visits, telephone calls etc., should be followed up in writing as this will form part of the evidence required.

From the above contacts and records all schools will need to demonstrate that they have made all reasonable attempts to support the child and family, these should demonstrate a tenacious, supportive, and challenging approach to working with the child and family.

If the parent does not speak fluent English and/or has problems in reading English, it is expected that the school will arrange provision for the translating of letters and use of an interpreter in meetings

Once the school believes it has undertaken all reasonable steps to resolve the unauthorised absence problems, and the student's attendance is at or below the persistent absence threshold set by the Department for Education with at least 10 sessions of unauthorised absence in a 10 week period, it should refer to the Education Welfare service.

A Final Warning letter must be sent to each parent and must include a clear statement that the school will be requesting that the Local Authority consider undertaking a prosecution on the parent for irregular attendance as all routes of support have been unsuccessful.



## Notice to Improve

A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met (10 unauthorised codes in a 10 week period) and the school have offered support and discussed (or evidenced attempts to discuss) the attendance concerns with the parent/carer(s), a Notice to Improve can be sent to give them 20 school days to engage in support and improve their child's attendance. When used early, this intervention has proved to be successful in improving attendance.

When a Notice to Improve is used, it should be issued in line with processes set out in Staffordshire's Local Code of Conduct 2024.

To request a Notice to Improve the school must make a referral through the Staffordshire Learning Net portal. Full details of how to make a referral are at the end of this document.

The local authority will send the parent/carer (s) the notice to improve letter with the dates of the period and encouragement to work with the school.

Once the warning period has ended, if there have been no further unauthorised absences, the school referrer will be emailed and informed that this was a successful intervention, there will be no further action from the local authority. The school is expected to inform the parent of the outcome and praise the child for the improved attendance.

If there are further unauthorised absences and attendance has not significantly improved, then the EWO will request a signed registration certificate from the school and issue a Penalty Notice to the parent/carer(s).

Once this is paid, the EWO will contact the school to inform them and close the involvement. If there are further attendance concerns following this, the school are expected to re-refer with new evidence of how they have supported the family, and this will be allocated to an EWO to discuss what the next steps will be.

If the parent/carer(s) fail to pay the Penalty Notice, the EWO will send a reminder letter to the parent and if this is not responded to will withdraw the penalty notice and submit to court for a resolution using the Single Justice Procedure (SJP).

The EWO will inform the school of the parent's response to the SJP Notice and the court decision. Please note: if a not guilty plea is made by the parent a hearing date will be set. The EWO will inform school of this.



## Penalty Notices

Penalty notices are issued to parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or, in certain cases, at a place where alternative provision is provided. Penalty notices are intended to prevent the need for court action. They should only be used where it is deemed likely to change parental behaviour and support to secure regular attendance has been provided and has not worked or been engaged with or would not have been appropriate in the circumstances of the offence (e.g. an unauthorised holiday in term time).

Only two penalty notices per parent per child can be issued within a three-year rolling period. If the criteria is met for a third time, then SCC will investigate proceeding to court.

The Staffordshire Code of Conduct for issuing Penalty Notices contains specific information on the administration of Penalty Notices and should be read in conjunction with this document.

This has been published on our website:

<https://www.staffordshire.gov.uk/education/Education-welfare/Attendance.aspx>

We have also published advice and guidance for parents

<https://www.staffordshire.gov.uk/Education/Education-welfare/FAQs/FAQs.aspx>





### Statutory Legislation and Defences

The two sections of the Education Act 1996 which can be used to prosecute a parent for failing to ensure their child's regular attendance at school are Section 444(1) and Section 444(1a).

**Section 444(1) Education Act 1996** 'If a child of compulsory school age who is registered at school fails to attend regularly at school, then the parent(s) is guilty of an offence under section 444(1).' This offence is one of 'strict liability' i.e. if the evidence proves that the child has not been regularly attending school then the parents will be found guilty unless they can prove one of the statutory defences. This is the lower offence and the maximum fine a parent can receive is £1000.

**Section 444(1A) Education Act 1996** 'If a parent knowing that their child is failing to attend school regularly fails without reasonable justification to cause him / her to attend, then they are guilty of an offence under section 444(1A) of the Education Act 1996.' The maximum fine for this is up to £2500, a three-month custodial sentence or a community resolution order.

As defined in the Department of Education Working together to improve school attendance, August 2024. The statutory defences are:

- *The parent proves the pupil was prevented from attending by their ill health or any unavoidable cause, including exclusion.*
- *The pupil has been granted leave of absence by the school or, in the case of alternative provision, by a person authorised to do so.*
- *The absence was on a day set aside for religious observance by the religious body to which the pupil's parent(s) belong.*
- *The parent proves the local authority were under a duty to provide transport to the school and have failed to do so.*
- *If the school is an independent school, the parent proves that the school is not in walking distance of the pupil's home and the local authority have not made suitable arrangements for the child to either board at the school or be admitted to a state funded school closer to home.*
- *If the absence was from certain types of alternative provision, the parent proves the child is receiving education otherwise than by regular attendance.*
- *If the absence was from alternative provision, the parent had not been notified about the provision in writing before the absence.*

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- *If the child has no fixed abode and the parent can prove that their trade / business requires them to travel, and the child has attended school as regularly as the nature of the trade or business permits, and (if the child is 6 or over) the child has attended school for at least 200 sessions during the preceding 12 months up to and including the date on which the proceedings were instituted*

### **The Single Justice Procedure (SJP)**

All cases taken under section 444(1) Education Act 1996 in Staffordshire are dealt with via the Single Justice Process Notice. The Criminal Justice and Courts Act 2015 introduced the Single Justice Procedure which applies only to cases involving adults charged with summary-only, non-imprisonable offences.

In simple terms, the parents are no longer required to attend court but will receive a notice outlining the evidence upon which the prosecutor (local authority) will rely upon for the case and the options available to the parent.

If they plead guilty to the offence and indicate they would like to have the matter dealt with in their absence, a single magistrate will consider the case based on the evidence submitted in writing by the prosecutor, and any written mitigation the parents have provided. The single magistrate can convict and sentence, or dismiss the charge, as appropriate.

If a parent indicates on the notice, they wish to plead not guilty, the case is referred to a full court for a trial date to be set. A representative from the school and the local authority may be requested to attend.

The parents have 21 days to reply to the notice, should they not reply, the process continues



### **Prosecution Section 444(1) & (1A) Process**

School to provide section 9 witness statements with their request for statutory action. These will be requested by the EWO following the allocation if they have not been sent with the original referral.

Please note, that a separate statement is required from each individual school staff member who is submitting any evidence.

If the school employ an external provider to manage their attendance, they will also need to provide a section 9 witness statement.

An EWO will review the section 9 witness statements to ensure they contain sufficient information to secure a prosecution and at what level.

If there is not considered to be sufficient information to consider investigating for statutory action, the EWO will contact the school directly to discuss what additional information or actions would be required.

The EWO will then arrange for an Education Consultation Meeting (ECM) to discuss the barriers to regular school attendance with the parent/carer(s), the school and any supporting agencies. The ECM will be chaired by the local authority allowing for the views of all parties to be heard and considered. If an attendance plan can be agreed, a review period will be set and a further opportunity for the family to access support and improve attendance will be set.

At the end of the meeting the Chair will recommend whether an investigation into the offence can start. This decision rests solely with the Local Authority and in Staffordshire this responsibility is delegated to the Education Welfare Service.

The same statutory defences apply, but further evidence will be required to demonstrate the parent knew of their child's irregular attendance and failed to act.

If it is considered that the evidence discloses an offence under section 444(1A), then the EWO will arrange to undertake an interview with the parents under PACE. Parents who are to be prosecuted under section 444(1A) will be interviewed in person by a local authority Education Welfare Officer (EWO) in accordance with the requirements of the Police and Criminal Evidence (PACE) Act 1984. Information obtained during the interview will form part of the evidence used in the prosecution.

The EWO will administer the court paperwork and serve the summons on the parents. The EWO will keep the school informed of all progress and of any potential requirement for their staff to attend court as witnesses. Any person who has made a Section 9 Statement may be required to attend court.



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Once the case is concluded in court, the EWO will inform the school of the outcome.

Please note: The Attorney General's Guidance for Crown Prosecutors must be considered by the Local Authority in all prosecution cases.

Further information on this can be found at: - <http://www.cps.gov.uk/>

### **EVIDENCE REQUIRED**

Evidence is anything that establishes a fact or gives reason for believing something. In court this can be documentary or oral and the accuracy of such evidence should be beyond doubt. The majority of our prosecutions are proved based on written evidence submitted in the form of a "Section 9" statement. In essence your statement is a factual story based solely on admissible evidence.

Offences under the Education Act 1996 are summary offences, and we can only give evidence obtained in the six months prior to laying the information before the court. (This is the date on the summons). Therefore, the Section 9 statement should only refer to involvements with the child and family within this timeframe.

Section 566 of the Education Act 1996 allows for the Certificate of Attendance, signed by the Head Teacher, to be presented in court without them being required to attend.

If a prosecution is to be brought wholly or partly on late attendance, then evidence will need to be given of when the school registration process closes. (This is usually provided in the schools Attendance Policy)

### **Section 9 Statement of Witness**

Section 9 of the Criminal Justice Act 1967 states for a witness statement to be used as evidence in any criminal proceeding.

#### **A Section 9 witness statement must:**

- Be a formal typed written document of a person
- Be a set of facts relating to a certain event or events, and not include hearsay
- Be signed by the person who makes it, to confirm that the contents of the document are true, this is known as a statement of truth, and
- Have had a copy served on the other parties before the trial (EWO to undertake this function).

**A Section 9 statement should** be written by the representative in the school who has dealt with the parents. This statement is the primary document used to set the context of the case and in respect of section 444 (1A) prove the parents had knowledge of the absences and failed to act.

Once the representative has made a written statement, they may be called on to attend court and give their evidence in person.

### **Section 444 (1) and (1A) prosecution**

Prosecution – evidence required.

The school may choose to address irregular attendance using the Section 444(1) & (1A) prosecution when they have either previously used a penalty notice, or when they believe that the level of unauthorised absence is such that a penalty notice would not be effective or a proportionate response to the parent's failure in ensuring their child is in regular attendance at school.

The evidence required for this offence is therefore:

1. The national threshold has been met or the national threshold has not been met but there has been a previous attendance concern or pattern identified.
2. Unauthorised absence is recorded correctly on a copy of the register signed by the head teacher.
3. The school can demonstrate they have tried to understand and address the issue with the parents. For Section (1A) specific evidence will be needed to demonstrate the parent(s) knew about the absence and failed to act or engage in addressing the unauthorised absences.
4. Parents have been sent a school 'final warning' letter to inform them that this will be referred to Education Welfare for statutory action. Please note that at this stage it is important to write to each parent separately (even if they reside at the same address), as they will be dealt with as individual cases within the court process.

To make a request for a Notice to Improve, a section 444(1) prosecution, or a Section 444 (1a) prosecution, the school would submit a request to Education Welfare via the Staffordshire Learning Net, attach the signed copy of the register and all the evidence of the work undertaken to address the irregular attendance. An assessment and/or attendance plan is expected to be included.

This information will be used at the Education Consultation Meeting (ECM) as the school's evidence and therefore should contain all the information the school would be relying on should the case go to Court.



## How to refer for Statutory Action

All referrals must be submitted through the Staffordshire Learning Net.  
<https://www.staffordshire.gov.uk/account/Login.aspx>

Each school has two login accounts, one for the head and one for the office. If you need to reset your password or ask for your school's login details you can email [SLNpasswords@staffordshire.gov.uk](mailto:SLNpasswords@staffordshire.gov.uk)

Once you have your account details and password, these are the following steps:

1. Login in
2. Select pupil support
3. Select attendance support.

This will take you to the referral page.

You will be asked to select your reason for referral from the following:

1. Excluded Pupil
2. Unauthorised leave of absence
3. Unauthorised persistent absence
4. Reasonable enquiry

You will then be asked to upload

1. Any evidence of work undertaken by school in chronological order
2. A signed attendance certificate showing the absence concern (this must be signed by the headteacher)
3. Any additional files related to the request, for reasons 2 and 3 this will need to include a copy of the letter you have sent to the parents to explain that you have attendance concerns, what support you have given and that you will now be referring to the local authority.

You will then be asked to check there are no known statutory defences and inform us if there is there any evidence of lack of co-operation from parent along with the dates of absence. These can be written as from dates. For example; 9.9.24 to 13.9.24

You will then be taken to a second page to fill in the details for the student, parent and yourself.

Once submitted this is then sent directly to an Education Welfare Officer to assess and process. If they have any queries or spot any missing information they will contact you to let you know.



## Useful Links

DFE Working Together to Improve School Attendance

[https://assets.publishing.service.gov.uk/media/66bf300da44f1c4c23e5bd1b/Working\\_together\\_to\\_improve\\_school\\_attendance\\_-\\_August\\_2024.pdf](https://assets.publishing.service.gov.uk/media/66bf300da44f1c4c23e5bd1b/Working_together_to_improve_school_attendance_-_August_2024.pdf)

Code of Conduct

<https://www.staffordshire.gov.uk/Education/Education-welfare/Documents/Penalty-Notice-Code-of-Conduct-July-24-FINAL.pdf>

Education Act 1996 (legislation.gov.uk)

<https://www.legislation.gov.uk/ukpga/1996/56/contents>

Early Help supporting documentation and forms

<https://www.staffscp.org.uk/working-together-to-safeguard-children/early-help-strategy/>

Frequently Asked Questions for Parents

<https://www.staffordshire.gov.uk/Education/Education-welfare/FAQs/FAQs.aspx>



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