

The Legal Context

Under Section 444 of the Education Act, an offence occurs if a parent/carer fails to secure their child's regular attendance at the school where they are a registered pupil; and the absence is not authorised by the school. Only headteachers can authorise absence and the only legal reasons for absence are:

1. that the absences are with leave (i.e. that they have been agreed by the headteacher)
2. that the absences are because of sickness or unavoidable cause. Parents may be asked to provide evidence to support absences due to ill-health, this can be through a copy of an appointment card or prescription or information from a medical practitioner
3. that the absences fall on days of religious observance for the religion to which parents belong
4. that the child is entitled to free transport to school and the Local Authority have failed to provide this.

If absences do not fall into any of these four categories or the school have not been informed of reasons for absence, absences will be marked as unauthorised.

Section 23 of the Anti-Social Behaviour Act 2003 introduced powers for issuing Fixed Penalty Notices for unauthorised absence from school. The Education (Penalty Notices)(England) Regulations came into force on 27th February 2004. This was updated with amendments in 2007, 2012 and 2013.

In Norfolk, Penalty Notices are issued in accordance with the Norfolk Local Protocol (May 2014). Your child's school will have provided you with information regarding the criteria in which they will refer cases of unauthorised absence to the Local Authority for issuing of a Fixed Penalty. The criteria are:

- 15% or more unauthorised absence for reasons other than a term-time holiday within a six week period.
- Where in a 12 week period, there are unauthorised absences bringing attendance below 90% and some or all of the absence may be attributed to an unauthorised holiday in term-time.

Failure to pay a Fixed Penalty Notice reverts back to a Section 444 1 Education Act 1996 offence and you will face prosecution in the Magistrates Court.

Frequently asked questions

1. Can I dispute the Fixed Penalty Notice?

Only a headteacher can authorise absence from school. If there are other exceptional and compelling circumstances of which the school were not aware of, you can make a representation to the headteacher. If the school maintain the absence was unauthorised, the Penalty Notice will stand. There is no right to appeal against a Fixed Penalty Notice, but you may choose not to pay and make your representations in the Magistrate's Court. You should be aware that should the court find you guilty of the offence of irregular school attendance, they can impose a higher punishment upon conviction. The court may also charge you with court costs.

2. I do not live with the child or I am a step-parent, can I still be fined?

- Yes, Section 576 Education Act 1996 defines 'parent' as:
- Any natural parent, whether married or not
 - Any parent who, although not a natural parent, has parental responsibility as defined in the Children Act (1989) for a child or young person
 - Any person who, although not a natural parent, has care of a child or young person.

3. Why do some schools authorise absence and another does not?

The headteacher is the only person who can authorise absence. Headteachers are only able to authorise absence requests for exceptional reasons and each circumstance will be individual and likely to receive a different response.

4. My child has never had unauthorised absence before?

The notice has been issued based on the referral criteria; which meets the threshold for irregular attendance at school. School attendance is crucial to children and any absence will have an impact upon your child's education. Your child's headteacher will have based their decision on whether the absence request was exceptional rather than based on your child's attendance level.