



SUFFOLK COUNTY COUNCIL

ENFORCEMENT POLICY For the EDUCATION ATTENDANCE SERVICE

**Enforcement Processes related to unauthorised
absences from School, including the issue of
Penalty Notices**

Review Date: August 2023

Glossary of Terms

Children & Young People's Service	CYP
Education Welfare Officer	EWO
Local Authority	LA
Penalty Notice	PN
Suffolk County Council	SCC
Schools	Includes Academies; Free Schools & alternate providers

Framework

The purpose of this Enforcement Policy is to ensure that suitable arrangements are in place for the consideration to institute legal proceedings against any person in relation to failing to ensure attendance at school and this includes prosecution following the issue of penalty notice. (see also Code of Conduct for Fixed penalty notices).

The law empowers designated county council officers to issue penalty notices on behalf of schools who make referrals following unauthorised absences and to consider the prosecution of parents for failing to ensure attendance at school.

In this context a "parent" is defined in section 576 of the Education Act 1996 and is:

- All natural (biological) parents of a child or young person, irrespective of whether they are married or not
- Any person who (although not a natural parent) has parental responsibility for a child or young person.
- Any other person having care of a child or young person, that is they live with and look after the child irrespective of their relationship to the child or young person.

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. An offence may occur where a parent fails to secure a child's attendance at school at which they are a registered pupil, where the absence is unauthorised.

Principals of Decision Making:

Education Attendance Service will exercise the regulatory activities in a way which is:

1. **Proportionate** – reflecting the level of risk to the pupil's education and the seriousness of the offence.
2. **Accountable** – will be open to scrutiny, with clear accessible policies including a fair complaints process.

3. **Consistent** – will be sort across the decisions to take court proceedings. Officers will use their professional judgement and discretion according to the circumstances of each individual case.
4. **Transparent** – ensuring that all can understand what the expectation is and that decisions are fair, accountable, and consistent.

Evidential Test: is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, the LA will consider what evidence is available and reliable. It must be satisfied that there is enough evidence to provide a realistic prospect of conviction against the offender.

Public Interest test: is it in the public interest for the case to be brought to court? The LA will balance factors for and against prosecution fairly and carefully, considering each case on its merits.

Equality of Opportunity

This guidance supports the following:

The promotion of regular attendance at school for all children to enable them to take full advantage of the educational opportunities available to them.

Responding to all children and young people, parents/carers, and colleagues as individuals affording them equal worth regardless of their gender, race, culture, religion, sexual orientation, and social background or additional needs.

Ensuring Professionals address inequality of opportunity where it is identified and will challenge discriminatory practices or statements wherever they occur.

Statutory Duties of the Local Authority in respect to school attendance:

Local Authorities (LA) have a duty to satisfy themselves that children who are not in the school system are receiving a suitable education. If the LA believes that a child is not getting a suitable education, it has a duty under Section 437 of the Education Act 1996 to serve a notice on a parent. The notice requires the parent to satisfy the LA that the child is receiving a suitable education.

These statutory duties are the responsibility of the Education Attendance Service led by the Strategic Lead for Attendance.

The primary function of Education Welfare Officers and Academies Attendance Officers is to promote the regular attendance at school of all children of compulsory school age and to assist in resolving any difficulties which may prevent a child receiving regular full-time education.

EWOs do this by working in partnership with families whose children are absent from school without legitimate cause, enforcing the law where appropriate, by supporting schools in their management of attendance, and by collaborative working with other services and agencies.

Actions available to Suffolk County Council in cases of non- school attendance.

Suffolk County Council, in partnership with schools, can use various legal powers if a child is missing school without good reason. Suffolk County Council could issue you with: An Education Supervision Order, a School Attendance Order, a Parental Contract or a Fixed Penalty Notice.

Education Supervision Order's

If Suffolk County Council thinks that a parent(s)/child needs support in attending school regularly they may apply to a court for an Education Supervision Order. A supervising officer will be appointed to support both parent(s) and child to access education. Suffolk County Council can do this instead of a formal prosecution, or as well.

School Attendance Order's

If following a notice under Section 437 of the Education Act 1996, the parents fail to satisfy the LA that the child is receiving a suitable education, and the LA has the opinion that it is expedient that the child attend school, then the LA must serve a School Attendance Order on the parent that requires the parent to register the child at a school named in the order.

You may receive a School Attendance Order if Suffolk County Council thinks your child or young person is not receiving an efficient education suitable to their age, ability and aptitude and to any special education needs they may have either by regular attendance at school or otherwise.

Before issuing a School Attendance Order, you will be sent a notice giving you a period of at least 15 days to provide evidence that your child is receiving a suitable education. If you don't or are unable to do so, then you could be issued with a School Attendance Order that will require you to register your child or young person at the school named in the order. If you fail to do this, or your child fails to attend the school, then you could be prosecuted.

Parental Contracts

You may be invited into your child(ren)s school for a meeting with an EWO to agree to a formal plan to help improve your child(ren)s attendance.

Fixed Penalty Notices

Any school in Suffolk may request a Fixed Penalty notice be issued for unauthorised absence during term time. Fixed penalty Notices are issued to offer the parent(s) a chance to discharge their liability for the non-attendance of their child(ren). More

information on Fixed Penalty notices can be found in the SCC Penalty Notice Code of Conduct.

Any prosecution would be for the period of non-attendance, rather than non-payment of the penalty notice. Various factors will be considered before proceeding to court including the Schools' Attendance Policy.

The issue of a Penalty Notice is one of a range of options available to encourage school attendance, the aim being to support parents to meet their responsibilities in law. Penalty Notices will only be used where there is a reasonable expectation that their use will secure an improvement, they offer a means of swift intervention at an early stage, before attendance problems become entrenched.

The aim is:

- To ensure a consistent and equitable delivery of addressing unauthorised absence.
- To support schools in their measures to address attendance and to support schools to fulfil their policies around attendance.
- To ensure a consistent and equitable issue of fixed penalty notices.
- To comply with statutory and other requirements

Legal proceedings

LAs also have power under sections 444 and 444ZA of the Education Act 1996 for criminal prosecution of parents to enforce attendance at school or alternative educational provision.

Suffolk County Council can issue more than one of the above, the council does not have to issue any of these before starting criminal proceedings.

Where one of the above processes has been deployed by Suffolk County Council, in partnership with the child(ren)s school, the school may request that SCC instigate legal proceedings. Examples of circumstances that may lead to a school requesting initiation of legal proceedings; Where a child(ren) has had more than one Term Time Holiday in an academic year and parent(s) have previously received and paid a Fixed Penalty Notices, where a Parental Contract targets have been met due to improved attendance, but attendance has since been unacceptable in the 15 school days following this.

Where, despite the support offered, parents fail to return their children to school or to provide them with a suitable education otherwise than at school, some form of legal proceedings will usually follow.

The exception may be in relation to some Year 11 students when, at the time of referral, it is too late in the school year for such proceedings to begin and it is not in the public interest to take such action.

The Police and Criminal Evidence Act 1984

The Police and Criminal Evidence Act sets out the conduct of those whose duty it is to investigate offences. EWOs are deemed as 'Investigating Officer's' under the Police and Criminal Evidence Act 1984

Subsection (1) of Section 444 of the Education Act 1996 states:

"If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence."

Subsection (1A) of Section 444 of the Education Act 1996 states:

"If in the circumstances mentioned in subsection (1) the parent knows that his child is failing to attend regularly at the school and fails without reasonable justification to cause him to do so, he is guilty of an offence."

At the outset of casework, therefore, parents should be given a formal written notification that SCC may take legal action. This formal notification is contained in the first appointment letter sent to parents.

Officers should explain the caution to parents at the beginning of the initial meeting.

- i) **Establish the basis of the interview.**
Before asking any questions relating to the non-attendance inform the parent that the LA is considering prosecuting the parent under S444 (1A) of the Education Act 1996.
 - ii) **Inform of the right to leave:**
The parent should be made aware that they are not under arrest and can leave at any time during the interview (if you are conducting the interview in the parent's home you should make them aware that they can ask you to leave at anytime).
 - iii) **Inform of right to legal representation:**
It should be made clear to the parent that they have the right to independent legal representation and advice in interview if they so wish. If the parent chooses to seek advice it is their responsibility to arrange this not that of the LA.
 - iv) **Deliver the Caution:**
Officers should satisfy themselves that the parent understands their legal responsibilities.
 - v) **Officer's should not carry out the interview under caution if the parent is:**
 - mentally vulnerable and there is no appropriate adult available
 - under the influence of alcohol or drugs
- is suffering from illness or other condition which may impair their ability to understand and answer the questions put to them in interview.