

FAQ - Penalty Notices for Un agreed Leave of Absence (Holiday) in term time

1. Who can make the decision not to agree the requested leave of absence?

The decision is entirely at the Head teachers discretion. There is no statutory criteria for exceptional circumstances but some of the following reasons may apply:

- Service personnel returning from active deployment
- Where inflexibility of the parents' leave or working arrangement is part of the organisational or company policy. This would need to be evidenced by the production or confirmation from the organisation/company
- Where leave is recommended as part of a parents' or child's rehabilitation from medical or emotional problems. Evidence must be provided
- When a family needs to spend time together to support each other during or after a crisis

This is not an exhaustive list. Head teachers must consider the individual circumstances of each case when making a decision on this matter. Leave is only acceptable against exceptional circumstances and should not be granted on the basis of attendance record, academic performance or the 'experience' offered by being out of school.

2. What evidence do I need for not meeting the criteria for exceptional circumstances when the request is for medical reasons??

If the request for leave of absence is for medical recuperation and does not have supporting evidence from a medical professional then a Penalty Notice may be issued if the leave is taken without the permission of the Head teacher.

3. Can a leave of absence be agreed retrospectively?

No. If parents/carers have not applied to the school in advance then the request cannot be agreed and should be coded as unauthorised absence. Leave of absence cannot be applied for retrospectively.

4. Does the criteria refer to only a block of an agreed leave of absence or can it be accumulated?

North Yorkshire LA's Code of Conduct for the use of Penalty Notices states that the unauthorised leave of absence can be accumulated over a period of 4 months but must meet the threshold of 10 sessions for a Penalty Notice to be issued.

5. Can I send the letter confirming the decision not to agree the leave of absence home with the child to hand deliver to the parent?

No. As the letter is key evidence in any possible future court case it is essential that the letter is posted out by 1st Class post. This ensures that the letter is deemed as legally served on the parent.

6. Should I send the letter not agreeing the absence to both parents?

The letter should be addressed to both parents if they live in the same household. If the parents live in separate households only send the letter to the absent parent as well if they are involved in the request.

7. What should I do if there are multiple siblings in different schools and parents/carers are requesting leave of absence?

It is good practice to contact the relevant school to ensure consistency. The Application Form has a section for parents to complete regarding names of siblings and schools attended.

8. Can I agree a leave of absence in term time for a child to partake in a performance?

Yes. Permission can be granted under the Child Performance Regulations (2014) for any absence from school on days when the child is actually performing.

9. Will children under 5 years or over 16 years be issued with a PN if an agreed leave of absence is taken in term time?

Children become of mandatory school age the term after their fifth birthday and leave compulsory schooling the academic year on the last Friday in June of the year in which they are 16yrs. Only children of mandatory school age come under the scheme.

10. What Absence Code do I use for a requested Leave of Absence for the purpose of a holiday in term time which does not meet the criteria of an exceptional circumstance?

Extract from DfE Guidelines:

Code G: *Holiday not authorised by the school or in excess of the period determined by the Head teacher.*

If a school does not authorise a leave of absence for the purpose of a holiday but the parents still take the child out of school, or the child is kept away for longer than was agreed, the absence is unauthorised. The regulations do not allow schools to give retrospective approval. If the parents did not apply for leave of absence in advance, the absence must be recorded as unauthorised.

Further relevant codes can be found using the link below:

(DfE "School attendance", October 2014)

<http://www.education.gov.uk/aboutdfe/advice/f00221879/advice-on-school-attendance>

11. Does the school or the LA make the decision to pursue the issuing of a PN?

Following parents/carers taking the child/ren on unauthorised leave of absence which meets the criteria for the issuing of a PN i.e. 10 school sessions (5 school days), it is expected that the Head teacher will submit a request to the LA with accompanied relevant documentation as follows:

- *Certificate of absence for an agreed leave of absence for the period in question*
- *Witness statement written and signed by the Head teacher*
- *Copy of leave of absence application form from parent/carer including reason for request and the Head teacher's reply (if possible)*

12. What if the parent takes the leave of absence without prior written application?

The school must make clear in the Witness Statement when and how the information was established with the parent that the absence would not have met the criteria for exceptional circumstances and should have been requested in advance.

**A request for leave of absence should not be granted retrospectively*

13. Can other members of school staff complete or sign the witness statement in relation to PN's

Only the Head teacher has the discretion to authorise or unauthorise the leave of absence or request a PN from the LA. (In the absence of the Head teacher this must be another member of Senior Leadership Team who has been delegated the responsibility)

14. When do I submit the request for issue of a Penalty Notice to the LA ?

The request should be submitted to the LA, by e-mail or post, two weeks after the unauthorised leave was taken. The offence has not been committed until the leave of absence is actually taken.

15. Can the LA refuse to issue the PN after school have submitted the request?

Yes, but only if the request does not fit the criteria laid down in North Yorkshire LA's Code of Conduct for the use of Penalty Notices. This may include the relevant evidence/documentation not being submitted or an error in the information sent .i.e. not signed by the Head teacher or lack of clarity whether the parent knew of the request not being agreed.

16. Is the Penalty Notice (PN) issued per parent per child?

Legislation indicates that the LA can issue PN's per parent per child and this has been included in documentation to schools. It is North Yorkshire LA's policy to issue Penalty Notices per child per family. The authority will determine on a case by case basis which option is most suitable based on information received.

17. If the Penalty Notice is not paid, what happens next?

The LA would then consider the progression of the case to the Magistrates Courts under the Education Act 1996 Section 444 (1). The Attendance and Enforcement Officer would present the case initially but, if a not guilty plea is entered by the parent, then the initial hearing would be adjourned to prepare for a full trial when the Head teacher may be summoned to give evidence.

18. What should I do if a parent gives me further evidence, after the Penalty Notice has been issued, which would support the absence being in exceptional circumstances ?

There is no statutory power to reverse a decision taken under the Pupil Registration Regulations and Government guidance (DfE "School attendance", October 2014) states specifically that there is no right of appeal against the issue of a penalty notice.

However, If the penalty is not paid in full by the end of the 28 day period, the LA must decide either to prosecute for the original offence to which the notice applies, or withdraw the notice. The further evidence supplied would be taken into consideration at this point.

Contact for further advice:

Julie Parrish (Attendance and Enforcement Officer) Tel: 01609 798013

Julie Kaye (Attendance and Enforcement Officer) Tel: 01609 532508

Or

North Yorkshire LA's Code of Conduct for the use of Penalty Notices can be found at: <http://cyps.northyorks.gov.uk/>

March 2015