

# Leave of Absence (Legal) Process

## Guidance for Schools and Academies

Birmingham City Council

September 2024



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# Leave of absence (pupils)

Please note that this is general guidance and relates to children of compulsory school age only.

## 1. Introduction

- From 1<sup>st</sup> September 2013, amendments to the Education (Pupil Registration) (England) Regulations 2006 made clear that Head Teachers of maintained schools and special schools not maintained by a local authority could not grant any leave of absence during term time unless there are exceptional circumstances, and then only when applications were made in advance. Academies were strongly encouraged to follow the regulations to ensure consistency across local authorities.
- From 1<sup>st</sup> September 2016, further amendments were made to the same regulations relating to removal from roll.
- On 19<sup>th</sup> August 2024, those regulations were replaced by the School Attendance (Pupil Registration) (England) Regulations 2024, specifically regulation 11. 'Working together to improve school attendance' states that all schools are expected to restrict leaves of absence as described in regulation 11, though maintained schools and non maintained special schools must do so.
- All schools can grant a leave of absence when a pupil needs to be absent from school with permission. These circumstances are:
  - **Taking part in a regulated performance or employment abroad:** in line with a licence issued by a local authority or Justice of the Peace or a body of persons approval (BOPA) (registration code C1).
  - **Attending an interview:** for entry into another educational institution or for future employment where requested in advance by a parent the pupil normally lives with.
  - **Study leave:** for public examinations, as agreed in advance with a parent the pupil normally lives with. Please note this does not include any internal examinations such as mocks as study leave should not be granted in such cases.
  - **A temporary, time-limited part-time timetable:** where the pupil is of compulsory school age, both the parent who the pupil normally lives with and school agree the pupil should temporarily be educated on a part-time basis for exceptional reasons and have agreed the times and dates when the pupil will be expected to attend school as part of that timetable.
  - **Exceptional circumstances:** All schools can grant a leave of absence for other exceptional circumstances at their discretion. In the case of schools maintained by local authorities and special schools not maintained by local authorities, it must be requested in advance by a parent who the pupil normally lives with. Schools are then expected to consider each application

individually taking into account the specific facts and circumstances and relevant background context behind the request. If a leave of absence is granted, it is for the school to determine the length of the time the pupil can be away from school.

## **2. Leave of absence for exceptional circumstances**

- Term time holidays are typically associated with applications for leave of absence due to exceptional circumstances. They continue to cause significant concern and debate. While there are many different views, the direct correlation between attendance and attainment is undeniable. Absence from school interrupts teaching and learning and compromises progress. Birmingham City Council therefore seeks to support Birmingham schools and academies in reducing the amount of education lost to pupil leave of absence in term time.
- In 'Working together to improve school attendance' the Department for Education is clear;  
*'Generally, the DfE does not consider a need or desire for a holiday or other absence for the purpose of leisure and recreation to be an exceptional circumstance.'*
- Birmingham City Council strongly discourages pupil leave of absence during term time. The expectation is that such leave would only be authorised in the most exceptional circumstances.
- **Birmingham City Council's Penalty Notice 'Code of Conduct', which governs the issuing of the Local Authority's penalty notices in relation to pupil absence, can be found via this link: [BCC Education Penalty Notice Code of Conduct September 2024 | Birmingham City Council](#)**

### **3. Making the decision following an application for a leave of absence for exceptional circumstances**

***IMPORTANT: Funerals Abroad - Parents requesting leave because of the death of a close relative such as the child's Grandparent should have their applications viewed on their merits. Such events can be distressing for families. Applications must not be treated differently from applications to attend a funeral in the UK because the relative lives abroad.***

***However, before making a decision to authorise the request schools are advised to review the child's historic attendance records to see whether requests for similar circumstances are a regular occurrence. School could request written confirmation of the date plane tickets were booked in order to ascertain whether the claim is genuine, if such requests have been made previously.***

***If the application is genuine, schools can code the absence as 'C' to reflect the circumstances.***

***It is recommended that schools authorise no more than a week's leave if funerals are taking place abroad.***

- When parents request permission to take their children out of school during term time where there are exceptional circumstances, an application form should be completed and submitted to the school at least two weeks before they are due to leave. Once the application form has been submitted by the parent, schools must not alter it by adding further details, for e.g., details of another parent.
- Parents must contact the school and allow the school to consider their application before booking flights or leaving the country if possible, even when unforeseen events occur (e.g. family bereavement). If that is not possible, parents should contact the school at the commencement of the leave.
- It is essential that all schools operate a formal process of application, interview and contract.

***IMPORTANT: A recommended application form and an agreement / contract form for authorised leave can be found via [Birmingham school attendance procedures webpage](#)***

- Head Teachers may, on rare occasions, make a judgement that there are genuine and exceptional circumstances pertaining to an application to take a pupil out of school during term. **Head Teachers should not operate a blanket ban on all leave of absence applications and should consider each application on its merits.** There is no formal list of exceptional circumstances but examples could include:
  - death of parent/carer or sibling of the pupil
  - life threatening or critical illness of parent or sibling of the pupil

- leave for armed forces personnel who are prevented by operational duties to take their leave at any other time
- leave of absence already granted by a previous school or local authority (granted within the last six months and supported by documentation from the previous school)
- Family emergencies need careful consideration. It is not always in the best interests of the pupil nor appropriate for them to miss school for family emergencies that are being dealt with by adult family members. School and school relationships can provide pupils with stability and care during difficult times.
- If leave is granted, the Head Teacher is the person who determines the number of school days a child can be away from school.

***IMPORTANT: Parents should be informed by the school of the law regarding term time leave. Schools may use the whole school letter 'School Attendance Update' Birmingham school attendance procedures for this purpose. Information for parents/carers clarifying their legal responsibilities regarding attendance and highlighting the impact of absence during term time should be made available each year to all parents/carers, through new parent and pupil induction, as part of parent evenings and in the school's prospectus.***

- Head Teachers are within their rights to turn such applications down and refuse authorisation for parents/carers to take their children out of school during term time.
- Schools should record the number and frequency of absence taken for this purpose throughout a pupil's school career in order to assess the potential impact on a pupil's education of any proposed further leave of absence.
- Head Teachers should also take into account the following circumstances:
  - the pupil's current absence record
  - the number of previous similar requests
  - the year group the pupil is in
  - proximity of major tests/exams
  - the time of the academic year proposed
  - the duration of the absence and its impact on continuity of learning
- If the school decides not to agree to the request and the parents/carers take their child/ren on unauthorised leave, the 'Leave of Absence (Legal) Process' should be followed in the first instance.
- Where children do not attend school, but unauthorised leave of absence is suspected (parents have not made a request for example) the usual school absence procedures must be followed. Schools must then follow the Children Missing Education procedures, for safeguarding purposes, jointly making reasonable enquiries to try to locate the pupil. (See Section 7)

***IMPORTANT: In circumstances where the parents/carers do not apply for authorisation prior to departure, retrospective authorisation of a leave of absence the Head Teacher is not permitted under the regulations.***

#### **4. Penalty Notices/Court Cases**

- Where a child has an unauthorised leave of absence but does not meet the criteria for 'Support First', schools can use an 'add on' process, the 'Leave of Absence (Legal) Process'. See section 8 below for the step-by-step process and the letter templates are available on the website: [Attendance procedures for schools | Pupil attendance, advice for schools and professionals | Birmingham City Council](#)
- This process enables the Local Authority to issue a penalty notices to parents for removing their child from school for an unauthorised leave of absence.
- If the Leave of Absence (Legal) Process is followed correctly, parents may be issued with a penalty notice for taking their child on one week's unauthorised leave of absence (code G only) with no previous unauthorised absence.
- Under the National Framework for Penalty Notices, penalty notices may only be issued twice to a parent in relation to a particular child within a three-year period. The first penalty notice can be paid at the discount level of £80 if paid within 21 days, or £160 between day 22 and 28. A second penalty notice must be paid at the full amount of £160 within 28 day as the discount does not apply for a second offence. If a third offence is committed the local authority cannot issue further penalty notices and must consider other forms of enforcement action such as prosecution under Section 444(1) of the Education Act 1996.
- Where parents seek to avoid penalty notices by regularly booking a leave of absence just under the threshold for enforcement under the National Penalty Notice Framework or Birmingham Education Penalty Notice Code of Conduct, action may be taken at the discretion of the local authority.
- For pupils who have taken unauthorised leave of absence for six weeks or more, penalty notices may not be issued as cases may proceed straight to court. In these instances, schools should continue to follow the usual Leave of Absence (Legal) Process. Decisions as to whether a penalty notice is to be issued or the matter proceeds straight to court lie with the Education Legal Intervention Team.

***IMPORTANT: The 'Leave of Absence (Legal) Process should not be used in isolation but as an additional programme to 'Support First'. Penalty Notices for unauthorised leave of absence may not be issued for schools who do not use 'Support First' to tackle high levels of ongoing unauthorised absence. Further details can be found at [Birmingham school attendance procedures](#) - click on Option 2 for Attendance Procedures)***

## 5. Absence Coding

- For the purposes of registration codes, leave of absence granted in exceptional circumstances should be coded as 'C' and counts as authorised absence.
- Where a leave of absence has not been agreed or for the days taken in excess of an agreement, it should be coded 'G' and count as **unauthorised** absence.
- Code G should be used for all unauthorised leave of absence, not just holidays. This includes unauthorised leave for the purposes of recreation with family members which could include for example:
  - family weddings
  - continuing to stay with family members and not immediately returning to school after a family event has taken place
  - medical treatment abroad

## 6. Deletion from Roll

***IMPORTANT: Pupils may not be removed from roll just because they have taken an unauthorised leave of absence and may only be deleted from the Admissions register if the grounds for deletion outlined in the School Attendance (Pupil Registration) (England) Regulations 2024 are met***

- From 19<sup>th</sup> August 2024, The School Attendance (Pupil Registration) (England) Regulations 2024 amended the grounds upon which children can be deleted from the Admissions register.
- In addition, the Regulations require schools to inform the Local Authority of all circumstances in which a pupil is removed from the register. Schools must use the Pupil Movement Form which can be accessed via the School Portal online. For more information, please contact School Admissions.
- In most cases of unauthorised leave of absence the 'Leave of Absence (Legal) Process' should be used rather than deletion from roll.
- For further advice about deletion from roll, please see the 'BCC Deletion from Roll' guidance:  
[Deletion \(removal\) from roll | Pupil attendance, advice for schools and professionals | Birmingham City Council](#)

## **7. Children Missing Education (CME)**

- Current DfE statutory guidance 'Children missing education, Statutory guidance for local authorities', which highlights the CME responsibilities of local authorities and schools, is available for download at [Children Missing Education DfE guidance](#)
- In respect of pupils absent from school without authorisation whose whereabouts are unknown, the guidance clarifies that the local authority must carry out reasonable enquiries into the pupil's whereabouts with schools jointly. It is vital, therefore, that schools refer any pupil whose whereabouts is unknown promptly, and no later than five days from the first day of absence, to the Children Missing Education Team at [cme@birmingham.gov.uk](mailto:cme@birmingham.gov.uk) so that they can carry out their enquiry in tandem with the schools.
- Schools are encouraged to call the CME team for guidance and support during the 'reasonable enquiry' phase as invariably, CME Officers may be able to conduct background checks on the pupil during those crucial first five days of absence. Deletion notices are issued by the CME team where a referral has been accepted and investigated but the pupil's whereabouts remain unknown and reasonable enquiries have been exhausted, or where the pupil has not been found and there is reason to believe the child will not return to the school. The deletion notice signifies compliance with the School Attendance (Pupil Registration) (England) Regulations 2024 section 9(1)(h) and 9(1)(i). Deletion from roll under these regulations cannot take place unless both the school and LA agree and the deletion notice has been issued.

## **8. The Leave of Absence (Legal) Process**

### **Step-by-Step Guide**

***IMPORTANT: that this process is in relation to children of compulsory school age only***

Schools are responsible for monitoring their pupils' attendance and, where appropriate, the Local Authority has a duty to prosecute parents in the Magistrates' Court for failing to ensure their child's regular attendance at school. A Penalty Notice is an alternative to a prosecution. It requires the parent(s) to pay a fixed amount as a fine for their child's irregular attendance to avoid prosecution.

**The Leave of Absence (Legal) Process** was developed to work **in conjunction** with other legal processes such as 'Support First' (which aims to reduce on-going absence), in order to reduce the unauthorised leave of absence in term time taken by pupils.

#### **What is compulsory school age?**

- If a child becomes 5 years old between 1<sup>st</sup> September and 31<sup>st</sup> December, they are of compulsory school age on 1<sup>st</sup> January
- If a child becomes 5 years old between 1<sup>st</sup> January and 31<sup>st</sup> March, they are of compulsory school age on 1<sup>st</sup> April
- If a child becomes 5 years old between 1<sup>st</sup> April and 31<sup>st</sup> August, they are of compulsory school age on 1<sup>st</sup> September

A child ceases to be of compulsory school age on the last Friday in June in the academic year in which the child turns 16.

#### **Who do we prosecute?**

Definition of Parent: Section 576 of the Education Act 1996:

A 'parent' in relation to any child or young person, includes any person:-

- a) all natural/adoptive parents, whether they are married or not;
- b) who is not a parent but who has parental responsibility for him; or
- c) who has care of him.

Parental partners can be included (whether or not they are married or the natural parent of the child) as they have 'care of' the child. If a pupil lives with a grandparent or older sibling as their main carer they can also be included.

***IMPORTANT: For this process only, separated parents who do not accompany the other parent on the unauthorised leave should not be included. If school have details of a parent but have had no contact with them, contact the Education Legal Education Team (ELIT) for advice:  
[Attendance@birmingham.gov.uk](mailto:Attendance@birmingham.gov.uk)***

### **When does the Local Authority take legal action under this process?**

- a pupil has been taken an unauthorised "leave of absence" from school or a place of alternative educational provision for minimum of 10 continuous sessions
- the school or place of alternative educational provision have followed the relevant Local Authority legal intervention process,
- If in an individual case the Local Authority believes a Penalty Notice would be appropriate, the Local Authority retains the discretion to issue one before the threshold is met. This will be in exceptional circumstances only, and the issuing of Penalty Notices in these circumstances can only be authorised by a manager within ELIT.

***IMPORTANT: Any N codes must be converted into O or G codes in order for legal action to be taken.***

### **Head teachers should ensure within their school:**

- all relevant staff are aware of the Leave of Absence (Legal) Process.
- all attendance registers are completed accurately.
- accurate and quality personal data is created, used and shared with the Local Authority, e.g. the correct details of children and parents, etc.
- the outcomes of the Leave of Absence (Legal) Process are publicised, without breaching GDPR rules.

***IMPORTANT: All requests for legal action should be forwarded to the ELIT who will then decide whether to issue a Penalty Notice, or in the case of unauthorised leave of six weeks or more, whether the case should proceed directly to Court.***

### **The 'Six Month Rule'**

Schools are advised to ensure that any legal intervention relating to pupil attendance is not allowed to drift, and that referrals are timely. The Local Authority is limited by the 'six month rule' which states that the Magistrates' Court must be informed of an offence by issuing a charge, summons, postal requisition or a complaint within 6 months of it being committed. The Local Authority must have referrals no later than 4 months after the start of the leave. Any referrals should be made as soon as the child returns to school. Late referrals may be rejected.

### **General rule s.127 Magistrates' Court 1980**

*'(1)... a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.'*

## **Getting Started**

### **The whole school 'School Attendance' letter:**

- the dated whole school letter (the same as that used for the 'Support First' process) should have been sent to all of the school's parents. It may be used in evidence but mainly it is good practice that parents understand the expectations of the school;
- **the letter should be sent out to each household via email or 'pupil post'**. If parents live at different addresses and the school hold this information, a copy of the letter should be sent to each address;
- the school should publish the letter on their website and consider including it in any prospectus and information for new parents
- this is the ONLY letter that can be signed electronically by the Head Teacher, which must be a direct copy of their actual signature
- the school should be prepared to answer any parental queries arising from this letter
- letters can only be signed by the Head Teacher but all other parts of the process can be undertaken by the member of staff who usually liaises with ELIT (the school attendance liaison person)

## **The Process**

### **Step One - send either the applicable 'Leave Denied' (LD) letter, or, in rare circumstances, a Leave of Absence Agreed (LoAA) letter:**

- ✓ LD1 Letter - If the parents/carers have applied for leave either in writing or verbally, either before the leave or as the leave commences, but the leave has not been authorised, the Head Teacher should send the 'request denied' letter immediately.
- ✓ LD2 Letter - If the school has not heard directly from the parents/carers prior to or as the leave commences (a friend or relative might have contacted school instead); the child has not returned from authorised leave on the dates agreed; or the child has returned from a period of absence where school suspect the child has taken an unauthorised leave of absence in term time, the Head Teacher should send the 'leave taken' letter immediately.
- ✓ LoAA Letter - If the parents/carers have applied for leave either in writing or verbally, either before the leave or as the leave commences, and the leave or part of the leave has been authorised as an exceptional circumstance, the Head Teacher should send the 'Leave of Absence Agreed' letter immediately, with a copy of the completed Leave of Absence Request Form and a copy of the Agreed Authorised Leave of Absence Home-School Contract as applicable.

**IMPORTANT: Whichever LD/LoAA letter is used, it must be on a school letterhead, dated, signed by the Head Teacher only, and include the contact telephone number**

- **Letters must not be signed on someone's behalf (p.p.)**
- Send a separate letter to each parent in a separate envelope and address letters using parents' full names, do not address them to the 'parent of' or 'Mr and Mrs XXX';
- Make sure the school has or obtains the parents' full names and that addresses and postcodes are correct; the Local Authority will also require the parents' DOBs, which can be found:
  - on the templated leave request form;
  - on free school meal forms;
  - from the parents themselves, either in person or via telephone.
- If the school is unable to obtain the DOB prior to requesting a Penalty Notice, do not allow this to delay the process, as the school can send this information to ELIT later, via email.
- **All letters must be signed then photocopied along with other relevant documents sent to the parent, before posting. The originals should be posted (first class not recorded delivery) to the parent and the copies retained for evidence.**
- All correspondence, as well as notes and reports documenting all contacts, including telephone calls, and arrangements made with parents, are retained;
- A record of the letters posted is retained, including individual names and addresses being added to a Postage spreadsheet and the exact date that the letter was sent specified.

**Step Two - once the child has returned from leave (and no later than six weeks after their return) complete the online LITT referral form. Both parents, if applicable, can be included on the one form. Please include the following documents scanned onto one PDF attachment to ELIT:**

- photocopies of all signed letters
- photocopies of any 'leave request' documents (if any),
- photocopies of any travel documents supplied by the parents
- up-to-date attendance printout for this academic year showing that the offence has been committed and that the child has returned to school
- an attendance printout of the previous academic year

The online referral form can be accessed via this link:

[Leave of absence referral form](#)

**IMPORTANT: The Local Authority cannot take legal action against parents if their child is not of compulsory school age; itself, if the pupil is a looked after child and the Local Authority is their corporate parent.**

### **Education Legal Intervention Team actions:**

- Review referrals ensuring they meet the requirements according to the 'Code of Conduct' and Crown prosecution rules;
- Issue a Penalty Notice/Single Justice Notice (straight to Court) to each parent as appropriate;
- If a Penalty Notice is issued, inform the school, via email, as soon as payment is received from a parent;
- Where Penalty Notices have been issued previously, ELIT may proceed the case direct to Court and, via email, will advise the school of this;
- Where unauthorised leave of 6 weeks or more is taken, ELIT may proceed the case direct to Court and, via email, will advise the school of this.

Please Note:

- ELIT does not send reminders to parents regarding payment and there is no facility for parents to pay a Penalty Notice in instalments;
- parents should be asked to send any queries following a Penalty Notice/Single Justice Notice to ELIT, in writing or by email. They can contest the Penalty Notice via an online form - the address is on the Penalty Notice;
- parents pay their Penalty Notices online, the details of which are on the Penalty Notice.
- Parents can read more information on attendance, or pay/contest their Penalty Notice online: [Online attendance advice for parents](#)

### **Timeline for actions when Penalty Notices are issued:**

PN Calendar Day 1

**Penalty Notices issued £80 per parent for each child  
(discount not available for a second offence)**

Please contact the team immediately, via email, if there are any errors

PN Calendar Day 21

**£80 Deadline**

PN Calendar Day 22-28

**£160 Deadline**

If the Penalty Notice has not been paid by Day 28, parents are generally prosecuted under section 444(1) of the Education Act 1996. If this is necessary, ELIT will contact the school, and ask the Head Teacher to prepare a witness statement.

Where it has been decided that the matter should proceed directly to Court via a Single Justice Procedure Notice, the school will be notified.

The Head Teacher may be required to appear as a witness at a trial if the defendant pleads 'not guilty'. Further information will be sent to the school about this at that time.

### **Factors that could prevent a case from proceeding:**

- incorrect coding on the *Attendance Certificate*;
- evidence that includes incorrectly recorded information, such as telephone calls or other arrangements with parents;
- mistakes in correspondence sent to parents;
- cases which fail the 'public interest' test;
- evidence that is more than 6 months old.

***IMPORTANT: Please respond to emails from ELIT by return, to enable the team to comply with time limits for these legal proceedings.***

### **Publicise outcomes**

The Leave of Absence (Legal) Process is a community initiative that raises parents and pupil awareness of the importance of school attendance. It is paramount that the school publicises the outcomes of the process, as this demonstrates that the school and the Local Authority take attendance seriously.

***IMPORTANT: Do not identify individual names of parents or pupils when publicising.***

ELIT will write to the school with an outline of the results when each case has concluded. These results can be shared with the school's population in a number of ways:

- sending out the results via a letter to parents
- in a regular newsletter distributed by the school;
- presenting the results at parents' evenings;
- including the results as an agenda item for school Governors' meetings; or
- including on the school's attendance notice board.

***IMPORTANT: To make the most of the Leave of Absence (Legal) Process, use all of the above!***

**Education Legal Intervention Team contact details**

Email: Attendance@birmingham.gov.uk

Urgent calls only: 0121 464 8979

Postal address: Education Legal Intervention Team  
Birmingham City Council  
P O BOX 16524  
Birmingham  
B2 2FP

# Useful Links

## **BCC guidance and procedures**

Birmingham City Council Penalty Notice Code of Conduct  
[BCC Education Penalty Notice Code of Conduct September 2024 | Birmingham City Council](#)

'Support First' and Leave of Absence (Legal) Processes  
[Attendance procedures for schools | Pupil attendance, advice for schools and professionals | Birmingham City Council](#)

'Deletion from Roll' Guidance  
[Deletion \(removal\) from roll | Pupil attendance, advice for schools and professionals | Birmingham City Council](#)

## **Department for Education guidance (including statutory guidance) and useful information**

Children Missing Education  
[Children Missing Education DfE guidance](#)

Keeping children safe in education - Statutory guidance for schools and colleges  
[Keeping children safe in education 2024 \(publishing.service.gov.uk\)](#)

Working together to improve school attendance  
[Working together to improve school attendance](#)

Supporting pupils at school with medical conditions - Statutory guidance for governing bodies of maintained schools and proprietors of academies in England  
[Supporting pupils with medical conditions at school - GOV.UK \(www.gov.uk\)](#)

The link between absence and attainment at KS2 and KS4 - 2018/19 academic year  
[The link between absence and attainment at KS2 and KS4, Academic year 2018/19 - Explore education statistics - GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

Advise to schools from the Ministry of Defence regarding term-time absence for service children - Updated 8 September 2021  
[Ministry of Defence guidance on leave of absence](#)