

Attendance Update:

This is an update to the guidance issued in a schools communication (SCO14283) on 20th June 2016 relating to legal intervention for term time absence.

Under the current HCC Code of Conduct a penalty notice may be issued to parents where a child has 10 unauthorised sessions within a period of 100 school sessions. This equates to 90% of a fixed time period.

One of the outcomes of the Isle of Wight Council – v - Platt legal case (13.05.16) is that we have needed to suspend this position temporarily as the definition of what constitutes regular attendance and the periods over which it can be calculated remain unclear.

In our previous position statement we said that schools should continue to unauthorise absence for holidays in term time unless there are exceptional circumstances, in line with regulations. However we advised that a penalty notice should only be issued where periods of absence over the academic year demonstrated that a pupil's overall attendance was below 90%. This was presented as an interim measure from the published position in the HCC Code of Conduct.

The Isle of Wight Council – v – Platt case has been referred to the Supreme Court for appeal, which will take some months to be heard. We have therefore reviewed our position ahead of the autumn term in order to help schools clearly understand what legal steps are open to them to address attendance rates, pending the judgment of the Supreme Court.

HCC will adopt the following temporary position from September 2016 until the end of the autumn term or until a judgment is made in the Isle of Wight Council – v – Platt case.

Under our extended temporary position we advise schools that:

- Penalty notices *can* be issued if a pupil has **40** or more unauthorised sessions within a rolling calendar year (equating to a 90% (or lower) attendance rate for the 12 month period). Authorised absence will not be included in this total.
- The 12 month rolling period is calculated from the last day of unauthorised absence once the 40 session threshold has been met and may inevitably straddle academic years, particularly at the start of the autumn term.

So for example, a pupil returns to school in September and then parents request leave of absence for term time holiday early in the autumn term. Due to the way that SIMs calculates % absence the pupil may very quickly register an absence rate of 90% or less. In this circumstance schools need to look back over the previous academic year to calculate up to a 12 month period of possible school attendance and re-run the SIMs report from that date to recalculate to ensure that there are 40 sessions of unauthorised absence.

In another example, a pupil may have had poor attendance last academic year and the pattern continues in the autumn term. In this circumstance the school may wish to monitor carefully and review regularly, when the pupil reaches a 90% threshold over a 12 month period, then a penalty notice may be issued. In this situation it would be advisable that parents are warned that legal intervention may be forthcoming and that the pupil's absence is being carefully monitored.

- The issuing of penalty notices solely for non-attendance by a pupil at a statutory assessment or formal examination has been withdrawn. Schools should code absence when a pupil should be sitting an examination as unauthorised (code 'O'). This unauthorised session will contribute to the 40 or more sessions required for penalty notice issue.

We acknowledge that this threshold is low and significantly below the national and county absence rates for both primary and secondary schools. However this should mean that when a penalty notice is issued the risk of a successful challenge will be low and the risk of unsuccessful prosecutions will be low.

It has become apparent from the analysis of individual penalty notice cases during summer term that many schools are authorising illness for pupils which is in excess of national and county averages. Schools may like to consider, in particular cases, only authorising absence through illness where medical evidence can be provided particularly if a pupil has an absence rate due to illness that is above the county average, which for 2014/15 was 2.4% for primary schools and 3.2% for secondary schools.

Similarly, it is also apparent that headteachers are authorising some sessions to support family holidays but not authorising others. We would advise that schools should only authorise absence if the reason for the absence is exceptional. The fundamental principles for defining 'exceptional' are rare, significant, unavoidable and short.

To support in understanding the implications of this revised position the FAQ page on the schools intranet has been updated and can be found under the following link:

<http://intranet.hants.gov.uk/schools-termtime-absence>

Any queries or further questions relating to this guidance please contact:
attendance.queries@hants.gov.uk