

Attendance – Statutory Legal Intervention

Preparing for the introduction of a National Threshold/Framework for Legal Intervention

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Aims and Objectives for this session:

To support attendees to:

- Understand the role and remit of the Attendance Compliance Team and how this fits within the updated “Working together to improve school attendance” guidance
- Understand the key changes within the updated guidance – national threshold and national framework
- Be clear about the transition arrangements which will apply to existing/pending cases as we move from the current local approach to the new national framework
- Feel confident in managing parental expectations in relation to the consequences that they may face if unauthorised absence patterns remain an ongoing concern
- Have a clear understanding of what is meant by “support first” and how this will need to be meticulously evidenced in all cases where statutory legal intervention is to be requested via the Attendance Compliance Team
- Leave the session with a “to-do” list to support their preparations for the new ways of working which will impact us all as from 19 August 2024/start of the new academic year

Attendance Compliance Team (ACT) – Staffing/role

Attendance Compliance Team, Children Missing Education and Elective Home Education = Education Compliance team (Countywide remit)

- From August 2024 - Attendance Compliance Officers (ACOs) x 5 (N.B. No family casework/family support remit)
 - ACOs will not go looking for evidence to support legal action in any given case – it is the responsibility of the referrer to share such information so that IT IS CLEAR that legal action is appropriate AS A LAST RESORT
 - Review referrals received from Essex schools and consider whether the pre-referral information is sufficient to enable a successful prosecution in court under section 444 1/1A Education Act 1996
 - Same consideration applies to requests for penalty notices – if fines remain unpaid, cases revert to section 444 1/1A Education Act 1996 prosecution – must be confident that this option is available where parents choose not to take the option of an “out of court settlement”
 - Request information directly from parents
 - Prepare legal files in readiness for listing for Magistrates consideration, have due consideration of The Code for Crown Prosecutors (e.g. is the legal action considered to be in the public interest)
 - Present cases on behalf of Essex County Council at Magistrates Courts across the County
 - Regularly field questions from Magistrates about the cases that are being presented – informs the level of information/updates that we require from schools ahead of court dates (subject to change – patterns emerge)
 - May attend TAFs, CiN Review Meetings, CP Conferences **for cases firmly within the legal process**

N.B. ACOs do not sit within the quadrant team model, managed centrally under Specialist Education Services – named Officer/single point of contact for each part of the County/district/school (see next slide)

Attendance Compliance Team – Officer Allocation – September 2024/25

Officer	Area Covered (Quadrant/District/Specific Schools)
Cheryl Vickers	West Essex – Epping Forest/Harlow/Uttlesford South Essex – Brentwood, Billericay and Wickford
Julie Holley (Mon – Wed)	North-East Essex – Tendring South Essex – De La Salle
Maria Knight	Mid Essex – Chelmsford, Braintree, Maldon South Essex – James Hornsby, Basildon Upper Academy
Rachel Anderson	North-East Essex – Colchester (plus a couple of Tendring secondary schools) South Essex – Basildon Lower Academy, Woodlands School
Tracie Yorke (Tues – Thurs)	South Essex – Castle Point/Rochford South Essex - Basildon (Primaries and Special)

Attendance Compliance Team – Staffing and role of the team (continued)

- Attendance Compliance Support Assistants (ACSAs) x 2
 - Support the ACOs in their preparation/collation of key documents for legal files, e.g. relevant exhibits, updated attendance certificates, sibling information, etc.
 - Liaise with Essex Court Listings to ensure that cases are listed in a timely manner and within relevant legal timeframes (within 6 months of the offence having been committed)
 - Take calls/payments from parents seeking to pay via telephone, wishing to “appeal” or asking for an extension of payment deadlines (N.B. all parents have the option to pay their fines online)
- Business Support colleagues (2 directly within the team, plus additional support depending on capacity)
 - Review all requests for penalty notices due to term time holidays – checking all pre-referral evidence has been made available – request from parent, response from school, attendance certificate, etc.
 - Issue all penalty notices relating specifically to term time holidays (i.e. 10+ sessions of G code)
 - Monitor cases until day 28 – if unpaid, cases transferred to ACSA to begin prosecution preparation
 - **N.B. Unpaid term time holiday cases are not automatically allocated to the link ACO for the given area/school. These cases are picked up by any ACO within the team who has capacity – remember this when seeking updates about such cases – ESI – schools may self-serve for updates**

Examples of challenges faced by ACOs when reviewing cases and preparing for court

Communication – When submitting referrals, schools agree to keep us updated. However, despite this agreement, we find:

- Families have moved house and we have not been informed
- Other agencies are involved and supporting the family
- Referrals have been made for support and family are awaiting support
- Parent has met with the school and raised significant issues that are affecting attendance
- TAFs have been held and we have not been invited/informed

Are there other children within the family attending other schools? – What is happening for them? If we are in court for a holiday taken during term time and one of the sibling's schools has authorised the leave, this will impact our case

School's chronology and paperwork states that parents do not engage – this is what we present in court. Parents then produce evidence to show that they have engaged with several meetings and communicated with maybe the HOY or class teacher, just not with the Attendance Officer. Person submitting referral should take responsibility to make the necessary checks and be certain about the accuracy of their information

Examples of challenges faced by ACOs when reviewing cases and preparing for court

Coding

- When you state medical evidence needs to be provided, please consider if you have seen the pupil and if the pupil has been unwell in school – is the medical evidence really necessary?
- If the medical evidence is provided – depending on the nature of the evidence shared and what it is for, you may need to authorise some/all of the absence, informed by the evidence
- If your school holds a 24/48-hour policy around sickness, you will need to consider how this is managed. It is very unlikely that parents will secure medical evidence for a sickness bug. If parents attempt to bring the child into school and you turn them away, due to your policy, this absence should be authorised

Within court we have our opportunity to speak - we present the case and our evidence and then it is the parent/duty solicitor's turn. If they mention things that we did not cover in our evidence, we are not in a position to mitigate this. The parent's word is the last word the court will hear, unless the bench ask us for our thoughts or give us a chance to rebut. Not being aware of significant issues/updates can undermine our case and lead to a reduced fine, or worst-case scenario, an absolute discharge

Sentencing is a matter for the court and, if the parent attends/submits a means form, any fine amount will be based on their income. Our measure of success must always be based on securing a conviction, not the amount of fine that the courts choose to impose

Why is this training being delivered and why now?

- The Department for Education's (DfE) updated "Working together to improve school attendance" guidance (published February 2024) introduces:
 - a national threshold for legal intervention; AND
 - a National Framework for Penalty Notices
- Both come into effect from 19 August 2024/start of the academic year 2024/25
- DfE worked very closely with Attendance Leads in local authorities, national associations (with a school attendance focus) and leaders within schools/Multi-academy Trusts (MATs) when producing the first iteration of the guidance which was published in May 2022
- Clear expectation for all schools/MATs/governing bodies/LAs to take the necessary steps to meet the expectations within the May 2022 version of guidance. N.B. The plan was always for the guidance to be placed onto a statutory footing
- Further work undertaken between DfE and key partners to review the guidance – led to the updated version being published on 29 February 2024, all regulations laid, comes into force as statutory guidance - **REGARDLESS OF THE OUTCOME OF THE GENERAL ELECTION LATER THIS WEEK!**

Why is it so important for colleagues to understand the changes being covered in this training?

- National threshold/national framework REPLACE criteria within locally agreed penalty notice codes of conduct
- National Framework for Penalty Notices - prescribed escalation process/limits – significantly impacts the use of penalty notices to address irregular school attendance/term time holidays
- Positive - removes postcode lottery
- For all cases - Essex County Council pre-referral expectations will be in line with the “Support First” approach which is at the heart of the culture and ethos promoted by the updated guidance
- Updated guidance states that ALL LAs are expected to:
 - “Issue penalty notices in line with the National Framework where absence was unauthorised and support has been provided but has not worked or been engaged with..” (or where support is not deemed appropriate e.g. term time holidays)
 - “Take forward attendance prosecution as a last resort where **all other routes have been exhausted** or deemed inappropriate.”
- Attendance Compliance Team want to be able to support schools with statutory legal intervention and this session is intended as a “heads up” so that we can accept referrals with the confidence that the statutory guidance has been followed

Current Essex-specific practice – Penalty Notices

Locally agreed Code of Conduct (last updated September 2019) allows for penalty notices to be issued when:

- 3 days/6 sessions of unauthorised absence have been recorded during the first two calendar weeks of September (**not** the first two weeks of term for each individual school)
- 5 days/10 sessions of unauthorised absence have been recorded within the previous 10 school weeks (G, O and/or U coded absence)
 - Maximum of 2 of the above penalty notices per parent, per child **within any 12-month period**
- A suspended/excluded pupil is seen within a public place, during the first 5 days of their suspension
 - Maximum of 2 suspended/excluded pupil penalty notices per parent, per child within any 12-month period

All fines currently issued at a rate of £60 per parent, per child – payable within 21 days. This rises to £120 if parents fail to pay lower amount within 21 days and they are then given until day 28 to pay the higher fine rate

- No payment plans/no right to appeal
- Payment extensions granted - exceptional circumstances

New “National threshold for legal intervention”

- National threshold – 10 sessions of unauthorised absence recorded within a rolling 10 school week period
- School weeks – any week where pupils have the opportunity to attend school
- Absence recorded across the 10 rolling school weeks may span different:
 - academic years
 - school terms
 - school placements (including where previous school was in another LA area)
- E.g. Year 2-3 transition, year 6-7 transition, cross border school placement changes, spring and summer term absences combined – maintaining oversight and close monitoring = crucial
- National threshold may be met with O, U and/or G codes (N.B. 10 sessions of one of these codes OR a combination) – **Closure of registers must be 30 minutes after registration period OPENS and after this closure of registers the U code must be used consistently for pupils who arrive after this time, without prior consent/knowledge of the school**
- For penalty notices specifically requested due to a single term time holiday – all 10 absences must be coded using G code and must be consecutive
- For penalty notices being requested for a mixture of unauthorised absence, the 10 unauthorised absences may be recorded consecutively or cumulatively over the rolling 10 school week period
- Authorised absence not relevant/will not be counted for the purposes of the national threshold

New “National threshold for legal intervention”

- “Working together to improve school attendance” guidance requires all schools, **as soon as the national threshold has been triggered by one of their pupils**, to consider whether it is appropriate to issue a penalty notice/take alternative action (paragraph 180)
- Blanket policies within schools/across MATs, regarding issuing penalty notices, are not supported within the updated guidance
- Expectation that all decisions are made on a case-by-case basis (including term time holiday requests) – using all available information held about the family when applying the use of discretion in such decisions
- Discretion – has **always** been a key feature of the penalty notice provisions
 - Some schools have moved away from applying this discretion – e.g. zero tolerance to term time holidays OR not requesting any fines when term time holidays are taken by families
 - All schools will need to move away from such blanket approaches and make informed, well-documented decisions for all – working together with partners and applying what is known about the child/family in all decision-making

National Framework for Penalty Notices

- Penalty notices issued for absences recorded AFTER 19 August 2024 will be issued at an increased rate - £80 (0-21 days) increasing to £160 (days 22-28) - raised in line with inflation
- Fines will only be issued if the national threshold for penalty notices has been met (i.e. 10 sessions of unauthorised absence within a rolling 10 school week period)
- No 3 day/6 session penalty notice provision for September 2024 or any September thereafter
- Maximum limit on the number of penalty notices that LAs are permitted to issue - 2 penalty notices, per parent, per child **within a rolling three-year period**
- Also introduces an escalation which impacts the two penalty notice maximum limit:
 - Fine 1 - £80/£160 (as above)
 - Fine 2 – issued at a flat rate of £160 (increased deterrent factor) – no option to pay at the lower rate
 - **Fine 3** within a rolling three-year period – **NOT AN OPTION**
- Penalty notices should only be issued to those parents who are believed to have allowed the absence OR were in a position to prevent the absence
- Rationale for maximum limit: Example in one LA where a parent received 4 penalty notices in relation to one of their children during one autumn term period – clearly not having any impact, calls into question WHY 4 fines had been issued and why the legal response had not been escalated
- Also 2 parents, 2 children (Fine 2 at flat rate: £240 vs. £640)
- Impact of social media – parent-parent encouragement of EHE/longer holidays (prosecution instead of fine?)

Statutory Defences – parents have not committed an offence if:

- The parent proves the pupil was prevented from attending by their **ill health or any unavoidable cause, including exclusion**
- The pupil has been **granted leave of absence by the school** or, in the case of alternative provision, by a person authorised to do so
- The absence was on a day set aside for **religious observance** by the religious body to which the pupil's parent(s) belong
- The parent proves the **local authority were under a duty to provide transport to the school and have failed to do so**
- If the school is an independent school, the parent proves that the school is not in walking distance of the pupil's home and the local authority have not made suitable arrangements for the child to either board at the school or be admitted to a state funded school closer to home
- If the absence was from certain types of alternative provision, the **parent proves the child is receiving education otherwise than by regular attendance (e.g. virtual engagement)**
- If the absence was from **alternative provision, the parent had not been notified about the provision in writing before the absence**
- If the **child has no fixed abode** and the parent can prove that their **trade / business requires them to travel**, and the child has attended school as regularly as the nature of the trade or business permits, and (if the child is 6 or over) the child has attended school for at least 200 sessions during the preceding 12 months up to and including the date on which the proceedings were instituted.

Absence coding changes – things for you all to be aware of

- H code will cease to be available – if exceptional circumstances are accepted when a request for leave is made, schools must code pupil's absence as C (other authorised circumstances)

Code Y will be broken down into:

Y1 – Unable to attend due to transport normally provided not being available

Y2 – Unable to attend due to widespread disruption to travel

Y3 – Unable to attend due to part of the school premises being closed

Y4 – Unable to attend due to whole school being closed

Y5 – Unable to attend as pupil is in criminal justice detention

Y6 – Absent in accordance with public health guidance or law

Y7 – Unable to attend because of other unavoidable cause

Q – Unable to attend the school because of a lack of access arrangements

- N.B. Absences falling under codes Y1, Y7 and Q (relates to transport) are ALL possible defences available to a parent being prosecuted under section 444 1/1A Education Act 1996. Important that you code appropriately and do not unauthorise any absence which falls under one of the new coding categories

Further advice relating to registers/register codes

- The purpose of the registers in every school is to accurately record who is present in the building when the registers are being taken and, for those who are not present, an absence code which accurately reflects the information held by the school in respect of the absence
- DfE are already anticipating that overall attendance in schools will decline slightly from the start of the new academic year, due to the changes in available register codes and their updated advice as to how these must be used by schools from 2024/25 onwards
- KEY THINGS TO NOTE/EXAMPLES:
 - Where a pupil is permitted to arrive late (e.g. 10am) as part of a reduced/part-time timetable OR to support their SEND needs, they will not be present during registration. The code that should be added to the register under the updated national attendance and absence codes guidance is C2 - Leave of absence – compulsory school age pupil subject to part time timetable = authorised absence (not L and not U)
 - Remote learning/online tuition – cannot use B code, must use C code (including, for example, where the LA has commissioned the online tuition for a pupil who they are educating due to medical needs). The new K code cannot be used for this purpose as the education is not being physically supervised and taking place at an off-site alternative educational establishment

Advice relating to rewards for attendance

- FACT: A pupil who is the subject of a part-time timetable which permits them to arrive late/leave early and means that they will not be physically present in both registrations each day will NEVER achieve 100% attendance for that academic year – for any registrations missed under such an agreement C2 code = authorised absence
- FACT: A pupil who has genuine medical needs / regular medical appointments which prevent them from attending school on a full-time basis will NEVER achieve 100% attendance for that academic year – I/M codes = authorised absence
- FACT: Clarified coding regulations mean that a pupil on remote learning/online tuition/using an AV1 robot will NEVER achieve 100% attendance for that academic year – cannot be recorded as present (in the building) during registration - because they were not! C code = absence

This will mean that such pupils will NEVER be eligible for good/excellent attendance rewards used by the school

However – many of the pupils subject to the educational arrangements mentioned above will be engaging with their offer 100%/close to 100% of the time. Schools may wish to think about **rewarding/acknowledging pupils for their clear commitment and engagement with their education**, rather than having rewards for high attendance levels (which relies on them having a present mark in the registers, all/most of the time)?

Notices to Improve – one last chance

- The National Framework introduces the use of a new document called a Notice to Improve
- Offers a final opportunity for parents to engage with support BEFORE a penalty notice is issued
- **N.B. SCHOOLS MUST USE THE TEMPLATE PROVIDED BY ESSEX COUNTY COUNCIL**
- Can only be used where the national threshold for legal intervention has already been met (unlike the current Legal Action Warning Letter which is issued before the trigger for a penalty notice has been reached)
- Guidance states “If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a Notice to Improve should usually be sent to give parents a final chance to engage in support”
- Where a Notice to Improve is not used, ACT will want to understand the reasons why
- Examples of circumstances where a Notice to Improve may not be appropriate:
 - Term time holiday absence (“support first” is unlikely to be appropriate)
 - Where it is believed that the Notice to Improve will not have any behavioural impact in regard to attendance
 - Where the parent has previously been issued with a Notice to Improve which failed to have the desired effect

Notices to Improve – one last chance

- Guidance states that Notices to Improve MUST be used consistently across each local authority area
- Validity period must be consistent – 6 school weeks has been decided for Essex – consistent with most LAs within the Eastern Region
- Notice to Improve template to be shared with schools (will be included within the pack, alongside these slides). The template includes:
 - Clear warnings relating to potential legal action if parent fails to engage with available offers of support and/or further unauthorised absences are recorded
- **Schools will need to add:**
 - **A list of all support which has already been offered, including the support which remains available**
 - **Details of who the parent needs to contact to engage with available support/discuss attendance of their child**
- This is an important letter within the new legal intervention process
- To reiterate – must use the template provided by Essex County Council
- Where used, must have been sent to each relevant parent, with clear evidence of how you know that they have received it (see slides 32 and 33)

Suspension/Exclusion Penalty Notices

- Suspension/exclusion penalty notices are **not** subject to the fine increase (will remain at £60/£120)
- They will still be issued if evidence is shared regarding a sighting of a suspended/excluded pupil within the first 5 days of their exclusion/suspension
- Very few of these types of penalty notices requested by Essex schools – 2023/24 has seen an increase
- Parents must have been notified of their legal responsibility to ensure that their suspended/excluded child is not seen in a public place during the first five days of their suspension/exclusion – IN WRITING AND VERBALLY (if parents have not been told from the outset, they can argue that they did not know) –
- These penalty notices WILL NOT count towards the national framework limit of 2 penalty notices per parent, per child within a rolling three-year period
- Essex County Council will continue to only issue a maximum of 2 suspension/exclusion penalty notices per parent, per child within any given 12-month period
- Dedicated online referral form for this type of penalty notice – specific questions – Who sighted the pupil? When (i.e. date/time)? Where (e.g. outside school gate at breaktime/lunchtime)?

N.B. This part of our existing penalty notice provisions will remain unchanged as we move into 2024/25

Transition arrangements – Key points to note as we move from 2023-24 to 2024-25

- For the purposes of the national framework for penalty notices, **clocks reset on 19 August 2024**
- For any absences recorded during 2023/24, the current LOCAL code of conduct will be applied (£60/£120)
 - N.B. Includes fines issued in September 2024 for absences recorded up to the end of the 2023/24 academic year
- Any fines issued for absences recorded BEFORE 19 August 2024 (whether the fine is issued before or after that date) will not count towards the limit of 2 fines per parent, per child within a three-year rolling period
- Only fines issued for absences recorded AFTER 19 August 2024 will count towards the new limits within the national framework
- Term time holidays taken up to the end of this academic year – penalty notices may be requested in September 2024 after the return mark has been recorded within the pupil's attendance register
- Existing cases from 2023/24 will be fully reviewed through the lens of the new framework before they are listed for court consideration (N.B. Court dates will now fall in the new academic year – courts will be aware of the statutory guidance – need for consistency)

N.B. Requests for penalty notices/direct prosecution due to irregular school attendance patterns (N.B. NOT term time holidays or suspension/exclusion) – **DEADLINE FOR NEW REFERRALS: FRIDAY 5 JULY 2024**

Penalty Notice: Code of Conduct

- Requirement for all LAs to have a locally published Code of Conduct which covers the arrangements and thresholds for fines relating to school absence that apply within their area
- New national threshold and framework required an updated version to be published to reflect the changes that come into effect on 19 August 2024
- Steering Group meeting – 30 April 2024, draft produced and shared for consultation (DfE’s template used)
- [Penalty notices | Essex County Council](#) – Final updated Code of Conduct, which will apply from 19 August 2024, was published on the ECC website on 5 June 2024
- Discretion statement: Paragraph 12 of the updated Code of Conduct
“All schools must consider whether a penalty notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a penalty notice. Schools should not have a blanket position of issuing or not issuing penalty notices and should make judgements on each individual case to ensure fairness and consistency across the country. **Essex County Council supports all headteachers within Essex to exercise their discretion when considering the appropriateness of penalty notice fines, based on their knowledge of individual families’ circumstances within their school community.**”
- **IMPORTANT:** From 19 August 2024, the LA must be in agreement **BEFORE any penalty notice may be issued under the published Code of Conduct**. This provision particularly impacts our local accredited company partners who have previously been accredited to issue penalty notices under the published code of conduct without the LAs prior agreement

IMPORTANT: Penalty Notice vs. Prosecution vs. Neither

- Introduction of the new national threshold and framework DOES NOT mean that all schools must go back to square one when requesting legal action
- There is no expectation that penalty notices must be used BEFORE prosecution will be considered by ACT
- However, ACT will need to have a clear rationale and appropriate levels of pre-referral evidence to proceed with a direct prosecution where there has been no previous penalty notice issued to the parent/s
- Similarly, where schools request a penalty notice but our records show that there have been previous penalty notices/prosecutions against the parent (for the same child/a sibling), ACT will provide a recommendation as to the most appropriate course of legal action, based on all of the intelligence they have available
- Remember:
 - penalty notice = out of court settlement opportunity
 - Prosecution = parents having a criminal record, if found guilty by the Magistrates - parent's future DBS certificate will show 'failure to safeguard a child's education'
 - SOMETIMES LEGAL ACTION WILL SIMPLY NOT BE DEEMED AN APPROPRIATE OPTION – LA HAS FINAL SAY
- **WHERE UNSURE** - Schools will, from September 2024, be able to book a 10 minute “legal intervention drop-in session” with an ACO to talk the case through and allow us to check what information we hold to inform the best course of action - more details will be made available soon

Pre-referral evidence/“Support First” – Revised expectations

- In order to access statutory legal intervention, record-keeping will be crucial for all schools
- Important to recognise that the collation of “Support First” evidence may involve multiple members of staff across the school
- Schools need a robust system to capture ALL that is being done by school staff to address early/ongoing absence concerns and to support an improvement in attendance
- There should be no “one size fits all” approach to tackling absence concerns - response needs to be bespoke and specific to the needs of the pupil or family – move away from Letter 1, Letter 2, Letter 3, etc.
- Consider communications sent to parents about who they are expected to contact to discuss attendance concerns – what advice have those staff members been given about how/where to log such contact?
- Meetings — same time/day offered for every meeting is not necessarily strong evidence of a supportive, flexible approach which is trying hard to engage parents
- Clear evidence of multiple opportunities having been offered to parents for them to engage with support
- Understanding family circumstances – Is coming into school for a meeting a viable option for ALL parents? May need to be open to offering alternative ways to meet, to secure engagement (e.g. virtual meetings, home visits, neutral venues) – resource implications, but may make all the difference
- All communications, engagement opportunities, reasonable adjustments, supportive strategies, discussions with/referrals to other teams/agencies, etc. will need to be clearly and consistently logged by all involved

Focus on record-keeping

- Legally, if it is not written down, it did not happen – remember to send a copy of notes from all key discussions to parents
- Be aware of **file disclosures** (required when parents choose to plead “not guilty” and the matter proceeds to a trial – if you would not say something directly to a parent, DO NOT write it down (e.g. in an internal email to a colleague). Any written records may need to be disclosed as part of the evidence held in any given case
- ACT will exhibit your work within our legal packs – ensure that it paints a positive picture about how you have worked hard with the family to try to resolve attendance concerns and to try to avoid legal action
- Everyone working with the pupil/family needs to be recording their involvement/the engagement achieved (whether positive/not)
- **N.B. Cannot use evidence from a meeting held with a child**

Pre-referral evidence /“Support First” – Revised expectations

- Senior Attendance Champion – updated guidance requires all schools to have a named Senior Attendance Champion
- Published Attendance Policy – must provide the name of the Senior Attendance Champion and the name of the day-to-day contact for parents wishing to discuss the attendance of their child (if this differs)
- Attendance Policy MUST make clear the possible legal consequences if parents do not engage or if the support offered does not resolve the attendance concerns (i.e. penalty notice/prosecution)
- Regularly signpost parents to your Attendance Policy/share it and go through relevant sections with them in face-to-face meetings - Hard copies should be made available
- After 19 August 2024 - there should be no ongoing situations where an Attendance Officer is working in isolation to improve the attendance of pupils on roll
- “Working together...” – applies to internal school colleagues AND, where appropriate, wider partners
- Clear need for regular communication between key internal colleagues (weekly/fortnightly?)
- Role of the Senior Attendance Champion will include the need to facilitate regular contact between Attendance Officer, SENCO, DSL and any other colleagues (**including Accredited Companies if you use them**) who may have an insight into why a pupil may not be attending regularly
- Needs to be clear for all concerned WHO out of the internal group is taking the lead
- Supports whole school, coordinated approach AND avoids parents being contacted by multiple school staff about the same concerns

Action Plans/Parenting Contracts – to be known as “Attendance Contracts”

- Guidance continues to support the use of action plans to address school attendance concerns
- **ONE MAJOR CHANGE: Professionals cannot agree an action plan if the parent/s are not present at the meeting**
- Schools must no longer devise an action plan (which should technically be referred to as an “Attendance Contract”, moving forward) in the absence of parent/s
- Current practice indicates that schools may choose to devise an action plan/attendance contract (e.g. when a parent fails to attend a meeting) and then send a copy to the parent via post/email – such practice is no longer supported by the updated statutory guidance
- If parents fail to engage in meetings, log their failure to engage
- Cannot use action plans/attendance contracts in cases where parents choose not to engage

Pre-referral evidence/“Support First” – Revised expectations

- All letters, emails, meeting invites, meeting notes, action plans/attendance contracts, review meeting notes – need to be properly addressed and stored so that they may be shared as part of the pre-referral evidence that may, eventually and as a last resort, accompany a referral into ACT
- Includes telephone/email contact with LA colleagues (e.g. SEND, Education Access, Attendance Specialist Team, Social Care/Hub, etc.) – these will need to be logged so that it is clear who was involved, what advice was received, how this was actioned, etc.
- Let’s Talk: We Miss You – Has this been used? What was the outcome/action as a result? If not used, why not?
- **Early** Help Drop In – case raised? Outcome/advice received? If not raised at this forum, why not?
- Has a TAF been held? When? Who was invited? If no TAF held, why? AGAIN: Should arrange a TAF **early – not when attendance is close to/already within the severe absence threshold**
- **Siblings on roll at another school – attendance = potential safeguarding issue (GDPR irrelevant)** – Different schools must work together and possibly meet together to join forces to support the family
- Is the Senior Attendance Champion/SENCO/DSL aware of the referral being made for legal action? Are they in support of the referral and in agreement that it is both appropriate and likely to effect change?
- A new online referral form/checklist is being created to support schools to share all relevant pre-referral work in a format which will facilitate the LA’s understanding of the support that has been offered and inform decision-making – it will act as a prompt for all the things, as a minimum, schools should have considered before hitting “submit” for any given referral

After submitting a referral to ACT – Ongoing expectations

- Schools MUST keep ACT updated about any change in circumstances affecting the pupil/family concerned
 - Change of family address
 - Change in pupil's living arrangements
 - Involvement of any other team/service
 - Change in educational offer e.g. reduced/part-time timetable/alternative provision/remote learning, etc.
 - Removal from roll in favour of elective home education
 - Change of mindset in respect of pursuing legal action e.g. family start to engage, attendance begins to improve, etc.

Failure to share such updates places cases at risk of being withdrawn. As a LA, we must ensure that we are acting with all available information to hand and that all of our legal correspondence is sent to the correct address, at all times

- ACOs have a duty to continually review ALL cases up to and including the court date – should the LA become aware of information which may impede a successful prosecution and/or means prosecution is no longer appropriate, the matter can be withdrawn/closed, with no further action

What to expect if ACT decline a referral....

- Firstly – make use of the drop-ins to talk cases through with your link ACO, before sending them in as formal referrals - this should help us all to avoid the above scenario!
- Due to the renewed lens through which ACT will be reviewing all current referrals and new referrals received after 19 August 2024, we will find ourselves in a stronger position to provide recommendations as to what further “support first” strategies we feel should be used. Any recommendations will be made on the basis of ensuring that any evidence placed before magistrates clearly shows that legal action is being taken as an **absolute last resort**
- Once any recommendations have been actioned, we will gladly review the updated pre-referral evidence and reconsider your referral submission

Wording of communications to parents – impact on parental perception of school – Things to be mindful of

- Your contact with parents from the outset and for as long as possible, where attendance is a concern, should be soft, supportive and nonthreatening
- Listen, understand, empathise and support, do not tolerate
- Some letters that are currently in use go against the “support first” approach – start to threaten legal action early
- This may be causing parents to lose trust and disengage, rather than choose to work with the school
- Letters/emails to parents should raise your concerns, say that you want to listen, understand and help
- Provide accurate contact details for the person that parents should contact to talk things through
- Offer alternative ways for the parent to engage – telephone call, video call, in person meeting (school / home?), etc. – any early engagement is better than none!
- Use of the right supportive language/a little additional resource put in during these early informal stages will, potentially, reduce the amount of formal intervention/need for multiple meetings for the vast majority of cases
- Whole school approach – try to imagine the perception of your school through the eyes of your parent community –
 - Are in-person meetings offered mostly due to negative reasons e.g. behaviour/attendance?
 - Do parents have any opportunities to see what life is like for their child in your school?
 - Risk: they take their child’s version as a statement of fact
- Virtual parents’ evenings? Fixtures?

How will you be expected to send communications to parents and which letters will be mandatory?

Current advice: all important letters, especially those containing warnings about potential legal action **MUST** be sent via Royal Mail, 1st Class post = HUGE COST IMPLICATIONS FOR MANY SCHOOLS
e.g. Legal Action Warning Letter, responses to term time holiday requests

New advice:

- If you are able to secure written consent from each parent that they are in agreement for all informal and formal school-to-home correspondence to be sent to them via email, this will be considered acceptable evidence moving forward – meeting invites, copies of meeting notes, responses to holiday requests, Notices to Improve, etc. **YOU MUST BE ABLE TO SHARE COPIES OF THE LETTERS SENT VIA EMAIL**
- Have a robust system to ensure that you can produce any emails (including any attachments within them) as evidence for cases referred to the LA

Important caveats:

- You must have separate email addresses for each parent and make use of these for each communication that you are sending N.B. You must be certain that you have the correct email address for each parent
- You must not send your correspondence to a shared email address e.g. thesmithfamily@gmail.com

How will you be expected to send communications to parents and which letters will be mandatory?

- Handing letters directly to parents – acceptable, provided that you are able to evidence which letter was handed to parent, by whom, date/time, etc. (template slip to be provided by LA for this purpose)
- **Expectation to issue a Legal Action Warning Letter – to be removed from new process**
 - Replaced by: signposting to School's Attendance Policy, which must make clear the possible legal consequences if parents do not engage OR support does not resolve the attendance concerns (N.B. hard copies)
- **Expectation to issue a clear response to ALL requests for leave during term time – to remain**
 - must be issued separately to each parent who may later be included in a request for a penalty notice/legal action if the leave is taken
 - If written consent in regard to email communications has been gained, this response (which must set out the risk of penalty notice/prosecution) may be sent via email
 - If no such consent has been gained, may hand letter to parent (see above) or send via Royal Mail, 1st Class post
- **Notice to Improve – should use OR be prepared to provide a clear rationale why you have chosen not to**

What is already available, via the LA, to support Essex schools to transition from current practice to the new ways of working?

Already available:

- **Model Attendance Policy - updated to reflect the “Support First” approach and includes advice for parents about the legal action risks that they may face if unauthorised absences are recorded (produced by EPHA, AST and ACT)**
- **Attendance Leaflet – setting out all relevant changes (produced EPHA, AST, ACT)**
- **Poster indicating key changes to the use of penalty notices “Helping parents to understand the changes to fines for term time holidays” (shared by APL)**
- Updated code of conduct – published on ECC website on 5th June 2024 (link available on slide 22)
- **Tables setting out the changes to register codes and also the grounds under which pupils may be removed from roll (shared by APL)**

What else will be made available, via the LA, to support Essex schools to transition from current practice to the new ways of working?

To be made available as soon as possible:

- Updated letter templates – softened wording, “Support First” ethos throughout, signposting parents to school’s attendance policy, clear contact details for who they should contact
- **Attendance and absence coding – one page summary**
- Updated response template for term time holiday requests – to reflect maximum limits/escalation of fines, etc.
- Updated “action plan”/Attendance Contract template
- **Notice to Improve template**
- A new online referral form/checklist – it will act as a prompt as to what schools should have considered before hitting “submit” for any given referral (e.g. Let’s Talk: We Miss You, TAF, Early Help Drop In, etc., SENCO/DSL view, etc.)
- Return to school conversation template, template for when letters are being handed to parents (not emailed/posted)
- Essex County Council: Attendance Policy and Practice Guidance (similar to CME / EHE Guides)

REST ASSURED THAT ESSEX COUNTY COUNCIL IS WORKING HARD TO SUPPORT OUR SCHOOLS TO BE READY FOR THE CHANGES THAT THE STATUTORY GUIDANCE BRINGS INTO EFFECT

Your feedback is important and part of your learning experience. Please feedback to us by completing the below short form.



<https://consultations.essex.gov.uk/workforce-development-1/c473248d>