

KNAYTON C OF E PRIMARY SCHOOL

- Learning for Life -



FAQ - Penalty Notices for unauthorised leave of absence (Holiday) in term time

Q1. Who can make the decision not to agree the requested leave of absence?

The decision is entirely at the Head teachers discretion who will follow the guidance from NYCC for the exceptional circumstances.

Exceptional circumstances list

- 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 list is not exhaustive and other exceptions will be considered.

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.

Q2. 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 please inform the school office of the date(s) of absence

Q3. 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 an unauthorised absence. Leave of absence cannot be applied for retrospectively.

Q4. Does the criteria refer to only a block of unagreed 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.

Q5. Will I receive a letter confirming the decision ?

Yes, this can be emailed or sent home with the child

Q6. Will the letter not agreeing the absence be sent to both parents?

The letter is required to 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 if they are involved in the request.

Q7. Can I obtain 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.

Q8. Will children under 5 years or over 16 years be issued with a Penalty Notice if an authorised leave of absence is taken in term time?

Children become of compulsory school age the term after their fifth birthday. Only children of compulsory school age come under the scheme.

Q9. Who's decision is it to pursue a Penalty Notice?

Following the parent(s) taking the child/ren out of school on an unauthorised leave of absence, which meets the criteria for the issuing of a Penalty Notice i.e. a minimum of 10 school sessions (5 school days) in a block or accumulatively over a four month period, it is expected that the Head teacher will submit a request to the LA with accompanied relevant documentation as follows:

- A Certificate of Attendance evidencing the unauthorised leave of absence for the period in question signed by the Head teacher
- A Witness Statement written and signed by the Head teacher (or SLT)
- A copy of the leave of absence application form from parent(s) including the reason for the request and the Head teacher's reply (if possible)

Q10. What happens if I take the leave of absence without prior written application?

The school makes it clear in the Witness Statement when and how the information was established that a leave of absence had been taken without the permission of the school. It is recommended that contact is attempted with the parent during the leave and, if information has come to light that a holiday has been taken, parents should be challenged regarding the absence on their return. A request for leave of absence should not be granted retrospectively.

Q11. When will a request for a Penalty Notice to the LA be issued

The request will be submitted to the LA by e-mail to safeguardingunit@northyorks.gov.uk or by post to Rm SB114, County Hall, Racecourse Lane, Northallerton, DL7 8AE, as soon as possible after the unauthorised leave was taken. The offence has not been committed until the leave of absence is actually taken.

Q12. Can the LA refuse to issue the Penalty Notice after school have submitted the request?

Yes, but only as stated in Q15 or 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 insufficient evidence being submitted or a material error in the information sent.

Q13. Is the Penalty Notice issued per parent per child?

Although legislation indicates that the LA can issue Penalty Notices per parent per child, it is North Yorkshire County Council's policy to issue Penalty Notices per child per family issuing no more than two per year per child. The authority will determine which parent to issue to, on a case by case basis, when parents do not live in the same household, however, the fine will usually be issued to the parent who had care of the child during the unauthorised leave.

Q14. If the Penalty Notice is not paid, what happens next?

The LA would consider progression of the case to the Magistrates Courts under the Education Act 1996 Section 444 (1). The case would be brought with regard to the unauthorised absence, as a Penalty Notice is offered as an alternative to a prosecution, and if not paid, the offence remains outstanding of 'failing to ensure the regular attendance' of a child of compulsory school age registered at a school.

NB: 'regular' was defined in the Supreme Court Judgement in the case of the Isle of Wight v Platt, in April 2017, as being 'in accordance with the rules prescribed by the school'.

The Attendance and Enforcement Officer will present the case in the court at the initial hearing. If a not guilty plea is entered by the parent, the hearing will be adjourned to prepare for a full trial. It would be rare for the local authority to request the Headteacher to be present to give evidence at the trial, as the Witness Statement should be sufficient. However the parent has the right to request the Head teacher attends.

Q15. What further evidence, should if I provide 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", November 2016) states specifically that there is no right of appeal against the issue of a penalty notice. However, if the fine 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. Any further evidence supplied would be taken into consideration at this point.

Contact for further advice:

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

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