

**ENFORCEMENT PROCEDURE
SCHOOL ATTENDANCE PROSECUTIONS
FOR UNAUTHORISED ABSENCE**

Introduction

1. This document provides information about the use of enforcement for unauthorised absence from school for children of compulsory school age who are attending maintained schools within Wirral (i.e. LA maintained schools, Church Aided Schools. Academies and Free schools)

2. Parents are responsible for ensuring full time, regular and punctual attendance of their child, who is of compulsory school age, suitable to their age, ability, aptitude and any special needs they may have at school or otherwise.

3. In this context a parent is :

- All natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person – having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child is considered to be a parent in education law.

4. Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to 'parent' in the singular.

5. A child reaches compulsory school age on or after their fifth birthday. If they turn 5 between 1 January and 31 March they are of compulsory school age on 31 March; if they turn 5 between 1 April and 31 August they are of compulsory school age on 31 August. If they turn 5 between 1 September and 31 December, then they are of compulsory school age on 31st December.

6. A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

7. Regular attendance has been defined by the Supreme Court (6th April 2017) to mean, "in accordance with the rules prescribed by the school".

8. For all Wirral Schools the interpretation of this ruling is every day that the school requires them to attend.

9. Full time is the whole of the time education is being offered – ie the timetable of the school.

Education Act 1996 Offence: failure to secure regular attendance at school of registered pupil.

10. Section 444(1) if a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.

11. Section 444 (1)(a) If in the circumstances mentioned in subsection (1) the parent knows that his child is failing to attend regularly at the school and fails ... to cause him to do so, he is guilty of an offence.

12. It is a defence for a person charged with an offence under subsection (1A) to prove that he had a reasonable justification for his failure to cause the child to attend regularly at the school.

Process and Practice for prosecution under sections 444(1) and (1)(a)

13. Schools should ensure they have a whole school approach to improving and maintaining school attendance. This should include roles and responsibilities of staff to encourage attendance and intervene when absence begins to increase as part of an escalation of intervention.

14. When a school has concerns about the attendance of a student they should:

- Assess the reasons for this
- Discuss the absence with the student and with parents/carers and agree how attendance can be improved
- Work proactively to support the student to improve attendance
- Correspond with parents to express concern and remind parents/carers of their responsibilities. If appropriate and necessary advise the parents of the school's intent to code the student as having unauthorised absence
- Determine whether the student is vulnerable and is receiving support elsewhere and if so liaise with other agencies

15. If the school believe that the parent/carer is not cooperating or appears to be cooperating without any improvement in attendance they can consider the use of an Education Penalty Notice. (Please see Education Penalty Notice Procedure document) However, if the parent has previously had a penalty notice or been prosecuted, school may wish to consider a prosecution. Schools may want to discuss the case with their Locality Attendance Officer or the Enforcement Officer before completing the Referral for Parental Prosecution Form. (A copy of this proforma is Appendix A)

16. It is vital that school complete each section of the referral form accurately as the Local Authority cannot proceed if information is inaccurate or incomplete.

17. The referral should be sent, via email (educationpenaltynotices@wirral.gov.uk) or Anycomms, to the Enforcement Officer who will consider the referral and endeavour to contact the school within 10 working days to advise either:

1. It is not felt appropriate to move to prosecution giving the reasons and suggesting any alternative action
2. It is appropriate to move to prosecution and the Enforcement Officer will agree a date for a Local Authority Prosecution Meeting to be held in school to which the following people will be invited:
 - parents/carers
 - School representatives who have worked to improve attendance
 - the Headteacher/SLT member or Attendance Lead

18. Parents/carers should be given one week's notice. (A sample letter is attached as Appendix B)

19. At the meeting the Enforcement Officer will listen to the evidence from the school and ask the parent/carer the reasons for absence.

20. If at this stage evidence comes to light that means a prosecution would not be appropriate an action plan will be written and agreed at the meeting with a 4 week review timescale. Failure to adhere to this plan/parenting contract may lead to prosecution without any further meetings.

21. If there is no reasonable justification for absence, the Enforcement Officer will advise the parent that they will be prosecuted. The Enforcement Officer will also seek the parents/carers views on an Education Supervision Order.

22. The member of staff in school will then be asked to prepare a prosecution report, including a draft unsigned witness statement, detailing the work school have undertaken to try and bring about an improvement in attendance. (A template for this is Appendix C) This report and accompanying evidence and a signed and stamped attendance certificate should be sent to the Enforcement Officer no later than 10 working days after the Local Authority Prosecution Meeting.

23. The Enforcement Officer will then meet with Legal Services and arrange a court date. The member of staff who has written the report will also be asked to attend this meeting and may be required to attend court. This meeting will also make a decision as to whether the prosecution will be for the basic offence (section 444(1)) or the aggravated offence (section 444 (1)(a)).

24. On the court date, if the parent attends and pleads guilty or pleads guilty by letter then the magistrates will, if the basic offence, consider the evidence and any mitigation and then sentence. If it is the aggravated offence, then they may adjourn to another date for sentencing to allow time for Probation Officers to prepare a pre-sentence report.

25. If a parent pleads not guilty then the case will be adjourned for a trial on a future date. It is only in these cases where a member of staff from school may have to give evidence in court.

26. If the parent fails to attend court then the magistrate may proceed to sentence in their absence if the basic offence or adjourn for sentence and for the parent(s) to attend if the aggravated offence. This may include a warrant without bail being issued for their arrest which can result in court appearances at short notice.

27. If the parent fails without any notice to attend the Local Authority Meeting the process continues with the member of staff from school preparing the prosecution report as above.

This document was agreed with the following:

Wirral Primary Headteachers Consultation Group

Wirral Association of Secondary Headteachers

And is effective from 1st September 2020 until such time as it is reviewed which will be at least every two years.

REFERRAL FOR PARENTAL PROSECUTION

Pupil Forename		Pupil Surname	
Address			
Post Code			
Date of Birth		Ethnic Origin	
Unique Pupil No (UPN)		School Year	
What is the pupil's current attendance?			
Number of sessions authorised absence?			
Number of sessions unauthorised absence?			
Is this child currently known to social care?	YES / NO		
Is this child currently in the TAF process?	YES / NO		
Has a referral to Early Help been considered?	YES / NO		

Parent 1 (as much information as possible must be given in order for any prosecution)

Title		Forename		Surname	
Address					
Post Code					
Tel No		Relationship to Pupil			
Parent's Date of Birth					
Parental Responsibility:	YES / NO <i>(Delete if not applicable)</i>				
Does the child live with this parent?	YES / NO				
Is this parent involved in the day to day care of the child?	YES / NO				

Parent 2

Title		Forename		Surname	
Address					
Post Code					
Tel No			Relationship to Pupil		
Parent's Date of Birth					
Parental Responsibility:		YES / NO <i>(Delete if not applicable)</i>			
Does the child live with this parent?		YES / NO			
Is this parent involved in the day to day care of the child?		YES / NO			
Are there any additional parents?		YES / NO			
Any additional comments re parents for consideration					

Siblings

Name	School	Attendance	Are the other school(s) taking any action

Does the pupil have any additional needs?	YES / NO
If yes what are these additional needs and what support is in place?	

Does the pupil have any health issues which may impact on their	YES / NO
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attendance and count as a defence in court?

If **yes** what are these issues and what is in place to support the pupil?

Have any issues in relation to bullying been raised?

YES / NO

If **yes** what has been done to address these issues?

Are there any issues outside of school which may impact on the pupil's attendance?

YES / NO

If **yes** please outline these issues eg housing, transport, Early Help referral etc.

Have the parents and the pupil been asked for their views on an Education Supervision Order?

YES / NO

If **yes** please outline their responses, or if not, please outline why this is the case.

What efforts have been made to ensure that both parents are aware of the poor attendance?

Please include a chronology of the attempts school have made to engage both the pupil and parents to improve the pupil's attendance.

Please also include any previous or existing plans with this referral.

School Name	
School Tel No.	
Contact Name	
Designation	

I can confirm that all our attendance registers are marked in accordance with the guidance issued by the DfE.

Dated this	day of	20
Signed:		Name:

School Header

to

date

your ref
my ref /Prosecution meeting/

service

tel 0151 Please ask for

fax 0151

email

Dear **(parent's name)**,**RE: (child's name and date of birth)**

Despite the efforts of school to support and engage you to bring about a change in XXX's attendance it is still a concern.

In view of this, the matter has now been moved up to the next stage.

I would be most grateful if you would attend **(location of meeting)** on **(date of meeting which should be at least 7 days after the date of this letter)** at **(time of meeting)**. During this meeting a representative from the Local Authority Attendance Service will listen to the efforts that have been made to try to bring about an improvement and a parenting contract will be drawn up. This is not a punitive or compulsory measure. However, it is intended to support you in improving your child's attendance and to give you and your child an opportunity to express your views. At the end of this meeting you will also be advised as to whether prosecution will be the next stage or not.

Please make every effort to attend so that any problems you are experiencing may be resolved without further action being taken. Please bring XXX with you if they are not already in school.

Failure to attend this appointment means you risk being issued with a Fixed Penalty Notice or prosecuted through the Courts under Section 444 of the 1996 Education Act or the Local Authority applying for an Education Supervision Order

If you are unable to attend please contact **(name)**, on **(phone number)** to rearrange.

Yours sincerely

Appendix CPROSECUTION REPORTPrevious Prosecution

Yes No

Name of Person completing report:

Tel:

Date of Referral to Wirral Attendance Service:

Child's Name:

Date of Birth:

Address:

School:

Year:

Parents

Parent 1:

(D.O.B./)

Address:

Parent 2:

(D.O.B./)

Address:

Are parents married to each other?

Do both parents have parental responsibility / day to day care?

Are both parents being prosecuted?

Siblings

Name	D.O.B.	School & Year Group	% Attendance

Social Care InvolvementChild Protection Child in Need TAF None

Please find attached the following documents:

- 1. S.9 Witness Statement**
- 2. School Attendance Certificate**
- 3. Witness Availability Chart.**
- 4. Correspondence.**

