



Not Fine in School

IS MEDICAL EVIDENCE REQUIRED TO AUTHORISE ALL ABSENCES FROM SCHOOL?

November 2022

AUTHORISING ABSENCE

The Education (Pupil Registration) (England) Regulations 2006, regulation 6(2) - Contents of Attendance Register

<https://www.legislation.gov.uk/ukxi/2006/1751/regulation/6/made>

(2) In the case of a pupil who is not a boarder, his absence shall be treated as authorised for the purposes of this regulation if—

(a) he has been granted leave of absence in accordance with regulation 7; or

(b) he is unable to attend—

(i) by reason of sickness or unavoidable cause;

(ii) on a day exclusively set apart for religious observance by the religious body to which his parent belongs; or

(iii) because the school is not within walking distance of the pupil's home, and no suitable arrangements have been made by the local education authority either for his transport to and from the school, or for boarding accommodation for him at or near the school or for enabling him to become a registered pupil at a school nearer his home.

NEW DEPARTMENT for EDUCATION SCHOOL ATTENDANCE GUIDANCE (applicable from 1st September 2022)

Working together to improve school attendance: Guidance for maintained schools, academies, independent schools, and local authorities - Department for Education (page 58-59)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073616/Working_together_to_improve_school_attendance.pdf

Code I: Illness (not medical or dental appointment)

219. Schools should advise parents to notify them on the first day the child is unable to attend due to illness. Schools must record absences as authorised where pupils cannot attend due to illness (both physical and mental health related).

220. In the majority of cases a parent's notification that their child is ill can be accepted without question or concern. Schools should not routinely request that parents provide medical evidence to support illness. Schools are advised not to request medical evidence unnecessarily as it places additional pressure on health professionals, their staff and their appointments system particularly if the illness is one that does not require treatment by a health professional. Only where the school has a genuine and reasonable doubt about the authenticity of the illness should medical evidence be requested to support the absence.

ADDITIONAL DEPARTMENT for EDUCATION COMMENT

Baroness Barran, The Parliamentary Undersecretary of State for Education (18/07/22)

<https://www.theyworkforyou.com/lords/?id=2022-07-18a.1801.4&s=speaker%3A25728#g1809.1>

“Schools are already required to record an absence as authorised where pupils cannot attend school due to sickness, both physical and mental health related. The department’s Working Together to Improve School Attendance guidance, which the [Schools] Bill would make statutory, sets out that medical evidence should be requested before recording an absence as authorised only when a school has a genuine and reasonable doubt, as the noble Lord quoted, about the authenticity of the illness.”

WHAT IS SUFFICIENT IN TERMS OF MEDICAL EVIDENCE?

EAST SUSSEX CC v. SUSSEX CENTRAL AREA JUSTICES 2019 WL 00237607 (2019)

<https://img1.wsimg.com/blobby/go/a41082e1-5561-438b-a6a2-16176f7570e9/downloads/East%20Sussex%20CC%20v%20Sussex%20Central%20Area%20Justices.pdf?ver=1570725130898>

- This is an appeal brought by a local authority against a decision of a magistrates court that parents had a defence to the claim they had failed to ensure their son’s regular attendance at school – that defence being his ill-health.
- The local authority appealed the magistrates decision on the basis that the parents did not have written medical evidence of ill-health for ALL their son’s absences.

- The administrative court dismissed the local authority's appeal on the basis that **written medical evidence wasn't necessary and the oral evidence of parents and other documentary evidence was sufficient to demonstrate ill-health on the balance of probabilities.**

IS YOUR CHILD'S ATTENDANCE RECORD ACCURATE?

The trigger for the local authority using legal interventions (fines and prosecutions) is often a school not authorising a child's absence. It is therefore important that you challenge decisions of schools not to authorise absences.

Your school should provide you with a copy of your child's attendance record on request:

- Check if any absences have been unauthorised
- Check each unauthorised absence against your own records (see 'Being Proactive' below) of the reason you gave for the absence on that date, and whether you have any evidence (medical or otherwise) to back it up
- If school do not authorise any absences, they should explain why they do not accept the reason/s you have given.
- if there are inaccuracies make a written request to the **headteacher** for amendments to be made. The register is a legal document, therefore the headteacher is responsible for ensuring the accuracy of their records
- You can also contact your local authority's **school attendance support team** for advice
- If your school continues to incorrectly mark your child's absence as unauthorised you should follow the school's complaints policy and make a formal complaint to the headteacher, followed by a formal complaint to the school's governing body if necessary <https://www.gov.uk/complain-about-school>
- You may also need to make a formal complaint to your **local authority** following their complaints policy
- If you do not believe your local authority has handled your complaint correctly you can submit a complaint to the **Local Government and Social Care Ombudsman (LGSCO)** at www.lgo.org.uk
- Where this is not resolved within a reasonable timeframe you should:
 - Escalate your complaint to the **Department for Education** explaining the school has failed to follow the DfE guidance described above and requested that it use its powers pursuant to section 496 of the Education Act 1996 to make a direction.

DfE helpline

Telephone: 0370 000 2288

Monday to Friday, 9:30am to 5pm

Contact DfE online

https://form.education.gov.uk/service/Contact_the_Department_for_Education

- Consider taking legal advice from a public law solicitor

BEING PROACTIVE

- **Keep a diary of what happens day-to-day to build a picture of the situation, and to evidence the steps that have been taken by you, the school, the local authority, and any other services who become involved**
- Collate and file all paperwork that relates to your child's barriers to attendance. This paperwork includes all emails, letters, texts, between you and the school, the local authority, and anyone else involved
- Try to keep communication in written form, however if you must make phone calls, note the details in your diary and try to follow them up with a summary of each conversation by email to those involved - ask for confirmation that you have understood the conversation correctly
- Take notes during meetings (It is often useful to take someone with you so that they can take notes while you listen, and you have someone to discuss the meeting with afterwards)
- Following meetings check that any minutes are accurate and ask that any inaccuracies are amended
- Try to engage with any support that is offered by the school or local authority
- Maintain ongoing communication with your child's school
- Seek the advice and support of your GP and any other health professionals caring for your child
- Read the school's policies for attendance, SEND, & Supporting pupils with medical needs – are they being followed?
- Refer to relevant DfE Guidance & legislation
- Explore the info and resources in our Padlet – **NFIS: What I Wish I Knew** https://padlet.com/NFIS/WIWIK_A2L