

P-04-606 Ensure Schools Exercise Their Statutory Powers Under Regulation 7 of The Education (Pupil Registration) (Wales) Regulations 2010 Without Interference or Bias. Correspondence: Petitioner to the Committee 11.01.16

Dear Petitions Committee,

Many thanks for your correspondence of 23rd December and the copies of letters from the Minister for Education and Skills relating to these petitions. As requested, please find attached our response to this correspondence.

Warm regards,
Jane Douglas
Pembrokeshire Parents Want A say

PEMBROKESHIRE PARENTS WANT A SAY
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William Powell AM
Chair - Petitions Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

11th January 2016

Dear William,

Many thanks to you, and to the Petitions Committee, for raising the concerns of our petitioners with the Minister for Education and Skills.

We welcome the Minister's letter of 11th December 2015 to Directors of Education and Educational Consortia which confirms the position in Wales regarding family holidays in term time. However, this letter and his

subsequent letter to you on 15th December have not fully addressed the concerns of our petitioners.

1) THE IMPLEMENTATION OF RESTRICTIONS ON TERM TIME HOLIDAYS BY LEAS

The Education Regulations concerning holidays in term time¹ and the Regulations concerning fixed penalty notices for regular non-attendance at school² are two separate pieces of legislation dealing with two separate issues.

There is NO reference to family holidays in the Penalty Notice Regulations yet from 2013–2016 Educational Consortia across Wales used the implementation of Penalty Notice Regulations as an opportunity to advise schools against authorising absences for family holidays. These attempts to limit the statutory powers of head teachers and the Penalty Notices issued to many families in Wales as a result are potentially unlawful.

2) TERMINOLOGY “REGULAR NON-ATTENDANCE AT SCHOOL”

The Minister confirms that fines issued under the Penalty Notice Regulations “are intended ...to tackle regular non-attendance”, however the lack of a common definition of “regular non-attendance” has led to inequities across Wales.

The DfE defined the threshold for “persistent absence” as absence of 20% or above until July 2011 when it reduced this threshold to 15% and then reduced it again in September 2015 to 10%. In Wales, Penalty Notice Legislation refers to “regular non-attendance” but fails to define this clearly. This results in a situation where local authorities decide the threshold for themselves with one local authority now proposing to issue penalty notices for absences of only 3% in a year (6 days of absence in one 12 week period)³. This is clearly beyond any recognised definition of “persistent absence” or “regular non-attendance”, it is inconsistent with the spirit of the Penalty Notice Regulations but yet it is occurring.

¹ The Education (Pupil Registration) (Wales) Regulations 2010.

² Education (Penalty Notices) (Wales) Regulations 2013

³

http://www.pembrokeshire.gov.uk/content.asp?nav=101,988&parent_directory_id=646&id=32083&Language=

ACTION 1: In the interest of equity could the Minister please ensure that LEAs in Wales have a clear and common definition for “regular non-attendance” for the purposes of issuing FPNs and that for this purpose, attendance percentages are calculated over a rolling 12 month period.

3) TERMINOLOGY “SPECIAL CIRCUMSTANCES”

We welcome the Minister’s clarification that “exceptional circumstances” only apply to absences for family holidays of 10 days or more. However some local authorities have also been using the terminology “special circumstances” with regard to authorising family holidays of fewer than 10 days (City and County of Swansea Council, Pembrokeshire County Council). This terminology has no basis in the relevant Regulations but has arisen due to a reference on p.22 of the Guidance on School Attendance Codes June 2010⁴ which states “Schools can only agree to absence for a family holiday if they believe there are **special circumstances** which warrant it.” (**my emphasis**).

ACTION 2: Could the Minister please confirm that there is no requirement that “special circumstances” must apply to authorisation of family holiday absences.

ACTION 3: Could the Minister please ensure that the Guidance on School Attendance Codes is amended to reflect the Regulations regarding family holidays.

4) SUPPORTING SCHOOLS

The Minister has asked LEAs to “provide clear information for parents and schools which is compliant with the law”, however local guidance and policies also may need changing.

ACTION 4: Could the Minister require all Head Teachers to ensure that their Attendance Policies are fully compliant with the Regulations and Guidance and do not include wording which implies any restriction or recommendation against the exercise of the statutory powers set out in the Education Regulations. It might be helpful if examples were provided to Head Teachers

⁴ <http://dera.ioe.ac.uk/565/1/100628attendancecodes4ien.pdf>

to help make application of their discretion more clear. We attach some potential examples.

5) ACCOUNTABILITY OF LEAS AND EDUCATIONAL CONSORTIA

With regard to the families who may have been fined due to misapplication of the Regulations, the Minister states in his letter to you that “it is for the judicial system to decide whether parents have been dealt with fairly and lawfully”. However, the Minister fails to acknowledge that the costly nature of legal proceedings will exclude the vast majority of Welsh families from seeking redress through our judicial system.

The evidence of widespread misapplication of the Regulations in Wales by LEAs and Educational Consortia over the past two years also suggests that their systems for ensuring that they are compliant with the law and accountable to those who are affected by their policies are not robust.

ACTION 5: We ask the Minister to commission an independent review to examine how Educational Regulations have been so widely misapplied across Wales and to identify and address the flaws in systems which have allowed this to happen unchecked over the years 2013–2016.

ACTION 6: We ask the Minister to provide a route for families to be reimbursed for fines issued due to misapplication of the Regulations which does not require the families to incur legal costs. We would consider the reimbursement of all fines, in areas where recommendations against the authorisation of absence for family holidays were in place, to be an appropriate and prudent action.

Yours sincerely,

Jane Douglas
Pembrokeshire Parents Want A Say

HEADTEACHERS DISCRETIONARY POWERS TO AUTHORISE ABSENCE FOR FAMILY HOLIDAYS – SOME EXAMPLES

Linda Screen

Pembrokeshire Parents Want A Say

January 2016

EXAMPLE 1:

Rhiannon is 9. Her parents have requested 6 days authorised absence from school at the end of term time for a family holiday. She has a regular attendance record at other times apart from 5 days of sickness absence when she had chicken pox after which she made-up the work missed helped by her parents. The HT decides to authorise the absence and ensures that school provides information on the topics that will be missed.

No of Days requested = 6

Absence is authorised as this lies wholly within HT discretionary powers.

EXAMPLE 2:

Seren is 15. Her attendance is below 90% after 5 days authorised absence for a holiday in January, a period of sickness, and a few late mornings. Seren's parents have requested a further 10 days leave for a family holiday in June. The HT speaks with class teachers about Seren's attendance and with this in mind and the unexceptional nature of the request the absence is refused.

No of Days requested = 15

HT has discretionary powers ONLY if there are exceptional circumstances. In this instance the HT did not find exceptional circumstances so did not authorise.

EXAMPLE 3:

Tomos is 12. His younger brother has an ongoing health problem and has been offered a new treatment abroad. Tomos' parents have requested leave of 3 weeks so the family can travel with both of their children to access the treatment and whilst overseas also take time for a family holiday. There are

no other family members staying at home to care for Tomos during the absence and his brother's illness has prevented them from holidaying together previously. The HT decides that this is exceptional circumstances and authorises an absence of 15 days but asks that Tomos take school work with him and make up the work he will miss.

No of Days requested = 15

HT has discretionary powers ONLY if there are exceptional circumstances. In this instance the HT finds that there are exceptional circumstances and authorises.