

Consultation on modernising school attendance and admission registers and setting national thresholds for legal intervention

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) represents over 21,500 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to respond to this consultation.

B. Response to questions

Proposal 1 – Rewrite of the Education (Pupil Registration) (England) Regulations 2006 Data sharing from admission register and attendance register

Question 1.1. Do you agree that registers should be kept electronically?

3. Strongly agree. This is already the case in the vast majority of schools.

Question 1.2. Do you agree that local authorities should have access and be able to take extracts from the admission register and attendance register of all schools to enable them to carry out their statutory functions?

4. Strongly agree.
5. We are pleased to confirmation that this data will not be used to hold schools to account. This was a key principle behind the trial of this new method of data collection, which must be retained in any longer-term approach.
6. We would like to see further clarity around what this data can and can't be used for, how long the data will be held, and the reasons behind holding the data for this length of time.

Question 1.3. Do you agree that schools should make a 'sickness return' to inform their local authority when the authority should arrange alternative education for one of their pupils?

7. Strongly agree. This would ensure that alternative education is agreed and arranged in a timely manner.

Question 1.4. Do you have any comments regarding data sharing?

8. Nothing further to the comments above.

Question 1.5. The current Education (Pupil Registration) (England) Regulations 2006 include a ground of deletion from the admission register where a pupil of compulsory school age is certified by the school medical officer to be unlikely to be in a fit state of health to attend school before ceasing to be of compulsory school age. Do you agree that this ground of deletion should be removed in the new regulations?

9. Strongly agree.
10. Any pupil of compulsory school age must continue to remain on a school's admission register, regardless of whether or not they have been certified by the school medical officer to be unlikely to be in a fit state of health to attend school. For safeguarding purposes, a pupil should only be removed from the admission register at the point when they have secured an alternative educational provider which is able to support their needs.

Question 1.6. Do you agree that another condition should be added to the grounds for deletion to allow a pupil's name to be deleted in the circumstances below?

- **Where the pupil has been absent without leave for ten school days after a leave of absence or has been absent for twenty school days without the absence being authorised,**
- **there is no reason to think the pupil is too ill to attend,**
- **the school and local authority have succeeded in finding out the pupil's location and circumstances, after joint reasonable efforts,**
- **and they have no reasonable grounds to believe that the pupil will attend the school again.**

11. Somewhat disagree.

12. As set out above, to ensure that a pupil does not become lost in the system, and for consistency in safeguarding and pupil support, our view is that a pupil's destination information should be confirmed before they are deleted from their previous school's register.

Question 1.7. Do you agree that where a pupil is the subject of an EHCP, CPP or CiNP the consent of the local authority (or the Secretary of State, if local authority consent is not given) should be obtained before the pupil's name can be deleted from the admission register, and state in guidance that this should only be used to allow the relevant plans to be updated?

13. Strongly agree.

Question 1.8. Do you have any comments regarding the admission register?

14. Nothing further to the comments above.

Question 1.9. Do you agree that recording in the attendance register should be simplified as described in the proposal above?

15. Strongly agree.

Question 1.10. Do the proposed categories in draft regulation 10(2)(a) and (b) sufficiently capture all types of attendance and absence?

16. Somewhat agree.

17. We believe more work should be done with the sector (schools, parents and professionals) as a matter of urgency to better understand requirements for *(iii) and unable to attend because of sickness*, and *(iv) and unable to attend because of an unavoidable cause* (as referenced in 10(2)b). This is particularly important in relation to authorising absence based on mental ill-health.

18. These categories should be reviewed on a regular basis.

Question 1.11. Do you agree that attendance should be recorded in the same way for all pupils (both compulsory and non-compulsory school age)?

19. Strongly agree.

20. However, it is important that it continues to be clear that, while attendance data may be recorded in the same way for all pupils, the way in which attendance regulations for pupils of non-compulsory school age are applied will, of course, be different.

Question 1.12. Do you agree that the new regulations should allow recording of approved remote education in the attendance register?

21. Strongly agree.

22. Given the increased opportunity and capacity for remote education developed as a result of the pandemic, it is sensible for schools to be able to record instances when pupils are in receipt of remote education in the attendance register. However, it is important that the government is realistic about a school's ability to deliver high-quality remote education in the various circumstances set out in the consultation, and that the data collected in this way is not used for any form of accountability.

Question 1.13. Is the proposed definition of approved remote education (at draft regulation 10(9)) sufficient?

23. Somewhat disagree.

24. ASCL believes that the second part of this definition needs further refinement. It is possible that the remote education provided may not be undertaken at exactly the same time as would have been the case had the session not be cancelled, for logistical reasons. These could include lack of access to a suitable device at that specific time (for example if siblings are sharing a device). We are also unclear as to what is meant by 'following an agreement between the proprietor and the pupils' parent over who is supervising or not supervising the pupil'. In practice, such agreement may be difficult or impossible to put in place, particularly in situations where large numbers of pupils are asked to access remote education at short notice (such as due to unexpected weather conditions).

Question 1.14. Do you agree that the definition of an approved educational activity should be strengthened?

25. Strongly agree

Question 15. Is the proposed definition of an approved educational activity at draft regulation 10(8) sufficient?

26. Strongly agree.

Question 1.16. Do you have any comments regarding the attendance register?

27. Nothing further to the comments above.

Proposal 2 – Thresholds for the new national framework for issuing fixed penalty notices

Question 2.1. Do you agree with the national thresholds, as set out in the proposal above, for the circumstances in which a penalty notice must be considered?

28. Strongly agree.

29. It is right that the proposals in the consultation balance the benefits of a national framework for the use of legal intervention with clarity that fixed penalty notices will be considered, but not mandated, when these agreed thresholds are reached.

Question 2.2. Do you agree that the maximum number of penalty notices that can be issued to each parent, per pupil, should be 2 per academic year?

30. Strongly agree.

31. Whilst we agree with the introduction of national thresholds, and with proposed maximum number of penalty notices proposed, we remain unconvinced that fixed penalty notices are an effective approach, particularly given the tension which their use can create between schools and families. Evidence from the Children's Commissioner's recent survey ('The Big Ask') highlights common reasons for poor and persistent absence, none of which are addressed or supported by the introduction of fines. We would like to see the government do more to explore and understand the reasons behind high absence rates as part of its current focus on attendance, and to base attendance-focused policies on this deep understanding.

Question 2.3. Do you agree that any person with authority to issue a fixed penalty notice should be required to check with the local authority before issuing one in order to prevent the duplication of penalty notices and to ensure that a penalty notice is not issued when a prosecution for the particular offence is being considered?

32. Strongly agree.

Question 3.1 What do you consider to be the equalities impacts of the proposals on pupils, parents, groups of pupils or groups of parents who have or share each of the protected characteristics listed?

33. Greater clarity may be needed in responding to families requesting leave for religious observance and related travel overseas outside of school holidays. Schools must retain appropriate discretion and flexibility in responding to such requests.
34. Pupils with SEND, mental health, medical conditions and certain protected characteristics must be considered according to their context and needs. An overly punitive approach to attendance can have a negative impact on vulnerable children and families. This also appears to be ineffective in encouraging reluctant and fearful children back into the classroom (see Epstein, Brown & O'Flynn (2019)).

C. Conclusion

35. We are grateful for the opportunity to contribute to this consultation.
36. We hope that this response is of value to the process. ASCL is willing to be further consulted and to assist in any way that it can.

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