

my child in school



# School Attendance

a practical guide to  
parents' legal rights



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## Abbreviations

<b>CAF</b>	Common Assessment Framework
<b>CAMHS</b>	Child and Adolescent Mental Health Service
<b>EWO</b>	Education Welfare Officer
<b>LA</b>	Local Authority
<b>SEN</b>	Special educational needs
<b>SENCO</b>	Special educational needs co-ordinator



**This booklet is based on the laws of England.**

# “My child isn’t at school”

## 1 Should your child’s absence be allowed?

Schools are required by law to take an attendance register twice a day which shows whether any absence is authorised or not. Authorised absence is where the headteacher has approved the absence, either before or afterwards. All other absences are unauthorised. The law is clear that it is schools, not parents, that authorise absence. You should write to the school to ask permission for an absence or to explain one that has already taken place.

### When the school must authorise absence

The school **must** authorise your child’s absence for the following:

- **sickness**
- **where school transport is unavailable**, e.g. because a road is impassable (unless the child is near enough to walk, meaning 2 miles for a child under 8 and 3 miles for a child of 8 or over)
- **days exclusively set apart for religious observance**
- **any other ‘unavoidable cause’** (which means unavoidable individual circumstances, e.g. flight delays from abroad or a ‘catastrophic event’ at the child’s home).

#### Sickness

Some cases can be quite complicated and the school will need full information to decide how it should treat the absence. If, for example, your child has a mental health problem such as depression or school phobia or a long-term condition such as chronic fatigue syndrome (sometimes called ME) you should send a letter from your doctor to show your child was too ill or distressed to attend school. Your child may need to see a specialist to show the absence is genuine. Keep a note of any appointments you have made and what the specialist said. If your child is too ill to attend school for more than 15 working days, the Local Authority (LA) should then provide some education for them e.g. home tuition.

# When the school can decide to authorise absence

In the following examples the school can decide whether to authorise the absence:

- **family holidays**
- **special occasions** such as weddings
- **family bereavements** and other compassionate reasons
- **family crises**, where e.g. the child needs to care for a relative for a short period or go on a prison visit.

## Family holidays

Time off for family holidays is not a legal right – the government recommends schools to allow up to 10 days during term time per school year, or more in ‘exceptional circumstances’, but it is up to the school. If you want to take holiday during the term you must contact the school and get permission beforehand.

## Traveller absence

Where children of traveller families can’t attend school because they are travelling, the school will normally authorise their absence. Travellers must attend at least 200 sessions a year, i.e. 100 days. Note that ‘travellers’ means people of no fixed abode who travel with their families for their trade, not people on extended holidays.

## Lateness

If your child is late before the register closes they will be marked present, but once it is closed, it will be recorded as an unauthorised absence. The government recommends that schools close the register 30 minutes after the session begins.

### If you don’t get permission...

If you let your child stay off school without permission, you will be breaking the law and might be fined and/or taken to court.

### School records

You have a right to a copy of your child’s school record which includes a record of your child’s absence. This is important because it will tell you which absences have been allowed by the school. Write to the governors for this. They must provide the record within 15 school days of receipt of your letter.

## 2 Compulsory education and home education

The law says that a child must receive education from the term following their 5th birthday until the last Friday in June in the school year in which the child is 16. However, this can either be at school or 'otherwise' than at school. You can choose to educate your child at home but you must make sure they receives a 'suitable education', in other words an 'efficient full-time education, suitable to their age, ability and aptitude and to any special educational needs they may have'.

If you want to home educate your child you don't need the LA's permission, but it is advisable to tell them what you are doing and they may check. (However, you do need permission if your child has a statement of SEN which names a special school).

For organisations that can advise you on home education see page 17.

## 3 Your child won't go to school – what can you do?

### Possible reasons

If your child is missing school without a good reason, you will need to find out why and follow it up. Do any of the following apply to your child?

- **Bullying** – this is a common reason for children refusing to go to school. You should write to the school and ask for a meeting to discuss how the school can help. See also ACE's booklet *Tackling Bullying* for more detail on how to get the school to take action. Some help is available from children's charities, e.g. Kidscape (see page 17). Meanwhile, keep a record of any incidents your child tells you about and get notes from your GP if your child is off school because of anxiety, depression or injuries inflicted by a bully.
- **Mental health problems** – such as anxiety, school phobia, panic attacks or depression can stop children going to school. Speak to the school special educational needs co-ordinator (SENCO) about extra help (see ACE's booklet *Getting Extra Help*). The education welfare officer (EWO), a school counsellor or school nurse may also be able to help. If you are very worried ask your GP to refer your child to CAMHS (see page 17). Also try contacting Young Minds (see page 17) and talk to the school about having a CAF assessment (see box on page 4).

- **Problems with learning** – some children are good at hiding their difficulties so it may not be obvious that this is why they are truanting. Learning difficulties can include emotional and behavioural difficulties as well as problems with reading, for example. Speak to the school’s special educational needs co-ordinator (SENCO) and get a copy of ACE’s booklet *Getting Extra Help*. See also Learning Support on page 6.
- **Problems at home** – is your family under stress? Death, illness, divorce, domestic violence, debt and housing problems all put a strain on family life and will affect your child. You may be able to get help from a variety of professionals and organisations depending on the problem and you could talk to the school about pastoral support for your child too (see page 5).
- **Moving about** – do you move about more than the average family? Some people move because of their work – you may be a travelling family or a service family, for example. Perhaps you are a carer and your foster child is unsettled by many moves. If you feel your child may have difficulty settling in and making friends, talk to the school to make sure they give them lots of support when they start. If you are a travelling family talk to the Traveller Education Service in the LA and if you are a service family contact the Children’s Education Advisory Service (CEAS). See also Pastoral support on page 5.

## CAF assessments

Parents can ask for their child to be assessed under the Common Assessment Framework (CAF). A professional of some kind (it could be, say, a teacher or EWO) will act as the ‘lead professional’ and will fill out a CAF form for your child, which will be used to decide whether they have any additional needs that can be provided by various services. Sometimes it is a good way to get help for children who are caught in the middle – they are not already receiving professional help for serious problems, but nor are they happy and fulfilled in their school life.

## Where to get help

- **Education welfare officer (EWO)** (sometimes called attendance adviser or education social worker) – the person in the LA who deals with families whose children have attendance problems. Most are linked to local schools. They should be able to talk to the school about any problems your child is having such as bullying, problems at home or difficulties with a particular subject or teacher. They also take court action on behalf of the LA against parents whose children do not attend school regularly, so if your child is missing school it is very important that you talk to your EWO and make it clear that you are doing your best to resolve the situation.
- **GP** – your family doctor might be able to help or might refer you to a specialist or other help.

- **Connexions** – a service which provides a personal adviser for young people aged 13 to 19, especially those having difficulties.
- **Child and Adolescent Mental Health Service** – schools or your GP can refer you to help from professionals working in the CAMHS service. (See page 17 for details.)
- **Educational psychologist** – schools can ask for an educational psychologist working in their LA to provide advice on how to help children with special educational needs including emotional difficulties. Ask your child’s school for details. See also ACE booklets: *Getting Extra Help* and *Asking for a Statutory Assessment*.
- **Parent partnership** – all LAs provide a parent partnership service to help parents of children with special educational needs.
- **Social worker** – they provide help for families where serious problems may be harming children and should also provide support for young carers.
- **Voluntary organisations** – some organisations are listed on page 17 but your local library or Citizens Advice Bureau may suggest other local organisations.

## Important

Keep written notes of all contacts you make with people or organisations about your child’s attendance. If you are ever taken to court because your child has not been in school you may need to show evidence that you were doing all you could.

# What kind of support is available?

## Pastoral support

Schools describe certain kinds of help for pupils as ‘pastoral support’. It can include:

- **Buddy schemes** – this is where your child is paired with another pupil. A friendly face in the classroom may make the difference for your child.
- **Mentoring** – where an older person, often a teacher or volunteer from outside the school, advises your child. This is most common for secondary age children.
- **Counselling** – some schools have professional counsellors working in the school to help pupils.
- **Part-time schooling** – many schools will be flexible if your child is under stress. They may allow the child to start a little later in the day or leave a little earlier to avoid problems such as conflict with other pupils or the home time crush. They may suggest your child comes in only for particular lessons for a time until they feel more confident about school. If you make an arrangement of this kind with the school remember that your child is still entitled to a suitable full time education appropriate to his or her needs.

The government says a short period of support in school should be given when a young person is turned off school and may be at risk of dropping out or exclusion. They call this support a **Pastoral Support Programme (PSP)** and it can include any of the help described above or other strategies suggested by the school, LA or yourself. For example, some young people may be asked to attend a pupil referral unit outside school for a period, e.g. for behaviour or anger management.

## Learning support

Schools often offer a variety of learning support, such as providing extra help for children with learning difficulties. See ACE booklets: *Getting Extra Help* and *Asking for a Statutory Assessment*. Many schools have a special unit in the school for children with learning difficulties: learning support units generally provide short-term help with study skills and particular learning difficulties, including behaviour problems and can provide a “safe-haven” for children who are bullied, under stress or have mental health problems, for example.

If your child does not have special educational needs but is aged 14–16 (Key Stage 4) and not enjoying normal school subjects, there is some flexibility to enable your child to be offered a different curriculum. This could include:

- studying different subjects than most other pupils e.g. dropping some subjects or studying vocational subjects
- longer work experience than other pupils usually have
- going to further education college for part or all of their week
- taking part in a local scheme e.g. doing voluntary work or outdoor activities

## Help for parents

Some schools may offer you voluntary parenting classes to help you manage your child’s behaviour and attendance. Ask at the school if you think this may help you and your child.

## 4 Write to the school

If any of the reasons described in section 3 above apply to your child you should write to the school to ask for a meeting to discuss the problem. If you are unsure who to approach at the school, write to the headteacher. Putting your request in writing may be useful later on if you need to prove you have tried to solve your child's attendance problem. You might like to use the sample letter below.

Dear Teacher [give name or job title]

I am concerned that my son/daughter is not attending school properly. I would like to meet you to discuss my child and what the school and I can do to help.

The points I would like you to know about are:

[list any reasons for the problem, e.g.

Jamie cannot read very well. This is putting him off school...

I think Dylan is upset because his grandpa has recently died...

I think Freya is being bullied. Most mornings she says she is unwell but I have noticed she is often alone at playtime...]

I am available for a meeting... [give dates].

[Now list any of the following if they apply to you]

I would like to bring a friend with me... [give their name].

It would help if you could arrange for an interpreter who speaks... [give your mother tongue].

I look forward to hearing from you,

Yours sincerely,

Parent [give your name]

### Important

Keep copies of all the letters you send and receive about your child's attendance.

## 5 At the school meeting

### What points should you make?

- Say what you think is bothering your child.
- Say when you first noticed the problem.
- Is it getting worse and how long has it been getting worse?
- Say if your child's behaviour has changed at home. If it is different from their behaviour at school, give some examples.
- Say what you think would help. Perhaps your child could change seats in class or get extra help, such as some form of pastoral support. Perhaps the school could agree to ring you straight away if your child is late or doesn't turn up.
- Ask how you can help. Would it help to take your child to school for a time or let them come home for lunch, for example, if this would be possible for you?
- Who will check that the help is working? When will this happen and how often? Who should you contact if necessary in future?

Make a note of anything you agree with the school. Send a copy to the school with any extra information or questions.

## 6 Parenting contracts

### I have been asked to sign a parenting contract – what is it?

If your child does not attend school regularly over a four week period or longer, the school or LA may ask you to sign a parenting contract. This is a written agreement which will ask you to take certain steps such as bringing your child to school. It should also include the support which the LA or school will provide to help you do this. Support can range from parenting classes to help with transport to and from school. The contract has no legal force but if you don't keep to your side, it could be used against you in any court action.

## Do I have to sign?

No, you cannot be forced to sign but bear in mind that not signing or following the contract could be used later as evidence that you did not co-operate if, for example, the LA later applies for a parenting order (see section 9) or takes you to court (see section 11).

Make sure that if you do sign, the contract includes support as well as targets for you and your child. It should say who will provide the help. Take time to consider the content carefully before you sign if you are not sure about what you are asked to do or whether the support is right.

## 7 You have been warned you may be fined or prosecuted

Some LAs act quickly and decisively to fine and prosecute parents. Others take more time. Some LAs use a 12 week process called 'fast-track', which is designed to help resolve attendance problems. If they do, you will be notified of the school's concerns and your child's attendance will be monitored. If it continues to be a problem you might be invited to attend a School Attendance Panel. If things don't improve in the following 6 weeks you may be issued with a penalty notice or taken to court. Whether the school uses fast track or not, 2 weeks before they issue a penalty notice you will generally receive a final warning about it. You will have 15 days from the final warning to improve your child's attendance. You need to take action during this time:

- Write immediately to the education welfare officer (see sample letter on page 10) giving reasons for your child's absence. For this you may need to check your child's school record to see whether the absence should have been allowed (see section 1). Set out all the points you want to make in as much detail as you can.

Date

Dear Education Welfare Officer

I am writing about the absence from school of my child [give their name, date of birth and school].

You have written to say I may be fined/taken to court because they are not attending properly. The reason for their absence is... [give the reason].

The school has authorised my child's absences... [say if the school record shows any absences have been allowed].

I have tried the following to improve their attendance... [say what you have tried e.g. taking your child to school; asking for help from the school; seeing your doctor. Send any notes of meetings or phone calls you have had or help you have asked for].

The school has tried... [say what the school has done e.g. given extra help in class, talked to the bullies. Say if this has not worked or if you think the help has not been enough. Say if your child needs any of the help listed on page 5].

I would be grateful for any [further] help you could offer... [you could suggest the EWO speaks to the school to arrange the help or helps set up a pastoral support programme for your child].

I would like a meeting to discuss this [give dates and times when you are available].

Yours sincerely

Parent [give your name]

## Important

Keep copies of all the letters you send and receive about your child's attendance.

There are some exceptional cases where a fine can be given without warning. For example, if the LA believes that you are capable of making your child attend school but are not willing to do so, or where you take your child on holiday for an extended period even though the school has said they will not agree to the absence.

## 8 Penalty notices (fines)

### I have been given a penalty notice and have to pay a fine for my child's absence

Your child's school, the LA or the police may issue you with a penalty notice which asks you to pay a fine to your LA by a certain date if your child does not attend school.

The fine will be £50 if you pay within 28 days and £100 if you pay after that. There is no formal appeal against the penalty notice but if you disagree and think the absence should have been allowed (see section 1), you should write to the education welfare officer in your LA giving reasons (see letter on page 10). If they think they have made a mistake, the LA can withdraw the penalty notice. If you do not pay within 42 days they may decide to prosecute you. If you pay the fine, you cannot later be prosecuted for the same offence.

## 9 Orders

There are several educational 'Orders' that can be made by the LA or the courts to ensure regular school attendance. These are set out below.

### School Attendance Orders (SAOs)

If a child is not on a school roll and is not receiving a suitable education, you might be given a notice telling you that you need to satisfy the LA that your child is getting a suitable education, either at school or otherwise. The notice will give you a time limit. If the LA is not satisfied within the time limit you will be sent a letter telling you that the LA is going to serve you with an SAO. The SAO will name the school your child should attend. If you don't obey the SAO and you can't show that your child is receiving a suitable education at home, you will be committing an offence and may be prosecuted. If you believe you are providing a suitable education at home you must explain this to the LA as soon as possible. If they disagree with your explanation you can appeal to the Secretary of State for Children, Schools and Families.

## Education Supervision Orders (ESOs)

The LA may apply to the Family Proceedings Court for an ESO when a child is not attending school properly. The LA has a duty to consider doing this before deciding to prosecute you. If you are being prosecuted, the court may also tell the LA to apply for an ESO.

Under an ESO the LA can tell you what to do to make sure your child is properly educated. You will lose the right to say which school you would prefer your child to attend and to appeal for a school place for as long as the ESO lasts. An ESO usually lasts for a year but can carry on for up to three years. Breach of an ESO without reasonable excuse is a criminal offence. You could be taken back to court and fined.

## Parenting Orders

If you fail to ensure your child attends school regularly (see section 10 below), a magistrates' court can make a parenting order. The Order will say that you have to attend some form of parenting course, counselling or guidance for up to three months. It could also have other requirements which you will have to comply with for up to a year, e.g. requiring you to take your child to school each day and perhaps to attend meetings at the school and to sign regular reports or updates. Breach of an Order without reasonable excuse is a criminal offence and you could be taken back to court and fined.

## Other Orders

There are several types of Order that an LA can apply for, such as Anti-Social Behaviour Orders (ASBOs) or even Care Orders if attendance issues form part of wider and very serious behaviour issues. These are outside the scope of this booklet.

# 10 Attendance offences

Parents can be taken to court for the following:

### **(1) Failure to secure regular attendance of a child (s 444 (1) of the Education Act 1996)**

This is used where a child is absent without permission and is without suitable alternative education. Parents found guilty of this can be fined up to £1,000.

## **(2) Failure to secure regular attendance without reasonable justification (s444(1A) of the Education Act 1996)**

This is used where the LA thinks the parent knows that the child is not going to school but is not trying to do anything about it. This is a more serious offence than (1) above because the parent is accused of not taking responsibility for the situation. Parents found guilty of this offence can be fined up to £2,500 or sent to prison for up to 3 months.

### **(3) Failure to comply with:**

- **School Attendance Order**
- **Education Supervision Order**
- **Parenting Order.**

Parents can be fined up to £1,000 if found guilty of any of these.

### **Steps the courts can take**

If you are found guilty of an offence you will have a criminal record, which could affect your future employment. This is a list of the kind of sentences the court can make if you are taken to court and found guilty (though what they do will vary according to the offence and circumstances):

- **Absolute discharge** – where the court thinks you are guilty but don't deserve to be punished.
- **Conditional discharge** – where no action is taken against you unless you re-offend within a set period.
- **Fine** – these vary according to the offence, but the court must take into account your means (i.e. your income and savings etc) before setting the fine.
- **Parenting Order** – the court has the option to make a Parenting Order (see section 9 above) if you are found guilty of an offence, but this will not be the only sentence the court gives – it can only give it in addition to one or more of the others.
- **Community Order** – if the court believes something more serious than a discharge or a fine is needed, it might order a community sentence consisting, e.g. of unpaid work or participation in a programme or course of treatment.
- **Prison sentence** – this can be given only if you are found guilty under s444(1A) (see section 10(2) above).

# 11 Going to court

If you are to be prosecuted you will be issued with a summons, which will tell you which offence you are charged with, when the case will be heard and at which court. You should take legal advice as soon as possible and get a lawyer to represent you in court. Find out if you qualify for legal aid or legal help by contacting the Legal Services Commission. If you don't qualify you may be able to get some help from Citizens Advice, Community Legal Advice Direct or your local law centre. Alternatively, find a solicitor who specialises in education via the Law Society. (See page 17 for all contacts.) As a last resort, if you are charged with an offence under s444(1A) you should be able to see a duty solicitor for free basic advice when you arrive in court, but it is better to have taken advice beforehand.

## Has any offence been committed?

If you are being prosecuted under either s444(1) or s444(1A) of the Education Act 1996, the court will need to decide if the offence has been committed. To do that the court will look at whether your child was at school, and if not whether any of the following statutory 'excuses' apply to the situation:

### The 'excuses'

- your child was ill
- your child's absence was authorised by the school
- the absence was on a day exclusively set aside for religious observance by the religious body to which you belong
- your child lives more than 3 miles from the school (2 miles if your child is under 8) but the LA has not provided transport to and from school or made boarding arrangements or offered you a school place nearer to home
- your child was excluded from the school (provided they attend any alternative provision offered to you)
- you are home educating your child (you must have taken your child's name off the school roll before the absences to use this defence)
- if you are travellers and your child has attended school for at least 200 sessions (100 full days)
- your child was away from school for an 'unavoidable cause' (though it is not clear in law what this can include).

If any of the above 'excuses' **do** apply, you will be found **not guilty** of the offence.

## If no 'excuse' applies

If **none** of the statutory 'excuses' apply, what happens next depends on which offence you are charged with:

### ■ The lesser offence (s444(1)):

You will automatically be found **guilty** of the offence.

Note that you will not be given the opportunity to explain any other circumstances (e.g. that the reason your child was away from school was because of bullying) at the time the court is deciding whether the offence has been committed (but once the court has decided, it may take other circumstances into account in working out how much to fine you.)

### ■ The more serious offence (s444(1A)):

For this offence you will now be given the chance to explain your circumstances. You will need to prove to the court that you have a **good defence** by showing that you did try hard to get your child to attend school. Your notes of meetings, copies of letters, emails and details of any phone calls you have made will help to show you tried to get your child to attend. The court will decide whether it thinks you made a great enough effort. If it thinks you did, you will be found **not guilty**, but if it decides you didn't, you will be found **guilty** of the offence.

### Important

If you think you might be taken to court for this offence make sure to keep a file of all letters and other documents and evidence that shows what you have been doing to get your child to school.

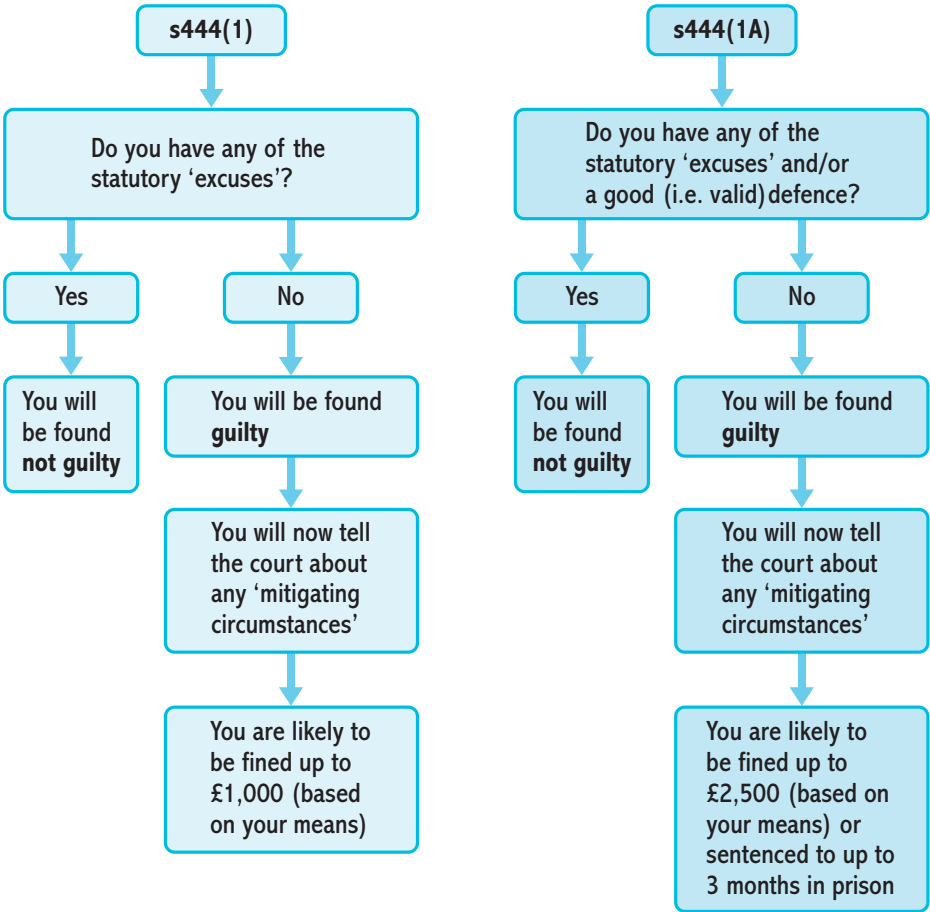
## If you are found guilty of either offence

If you are found guilty of either offence you should tell the court about any 'mitigating circumstances', i.e. anything that may explain why and how the offence occurred and/or lessen your responsibility for the problem. The court will take these into account when deciding how to sentence you. These might include:

- any problems such as bullying or other risks to the health and safety of your child.
- your child's physical or mental health
- difficult family circumstances, e.g. homelessness, divorce, bereavement, etc
- the fact that you have other children who do attend school regularly
- your age, health, whether you have co-operated with the LA and whether you are sorry.

# Which offence have you been charged with – s444(1) or s444(1A)?

As explained above, it makes a difference which offence you are charged with because the process is different for each and so are the consequences.



The consequences of s444(1A) are more serious than s444(1), but note that if you are found guilty of an offence under s444(1) you will not be given any chance to defend yourself – if there is no ‘excuse’ you will be automatically found guilty. There may be a good reason why your child has not turned up to school, e.g. bullying or mental health problems, but as these are not ‘excuses’, you will not be able to explain them to the court when they are deciding whether you are guilty of the offence. Many parents tell us when they are charged that at least they will be able to have their say in court – unfortunately, if they are charged with s444(1), they probably won’t get that opportunity.

# Further help

## From ACE

ACE freephone general advice line **0808 800 5793**

ACE freephone Exclusion advice line **0808 800 0327**

Information and free advice booklets can be downloaded from [www.ace-ed.org.uk](http://www.ace-ed.org.uk) or by contacting ACE (see back page).

## From the Department for Children, Schools and Families

Publications available to order from 0845 602 2260 or to download from [www.teachernet.gov.uk](http://www.teachernet.gov.uk)

Ensuring Children's Right to Education: Guidance on the legal means available to secure regular school attendance, 2008 (DFES-00529-2007)

Ensuring Regular School Attendance – Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices, 2007 (00530-200 BKT-EN)

Keeping Pupil Registers – Guidance on applying the Education Pupil Registration Regulations, 2008

Absence and Attendance Codes – Guidance for Schools and Local Authorities, 2008

## Useful organisations

**CAMHS:** [www.camhsnetwork.co.uk](http://www.camhsnetwork.co.uk)

**CEAS:** [www.mod.uk](http://www.mod.uk)

**Citizens Advice:** [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

**Community Legal Advice Direct:** 0845 345 4345

**Connexions:** [www.connexions-direct.com](http://www.connexions-direct.com)

**Education Otherwise:** advice on home education: 0845 478 6345

**Kidscape:** bullying advice: 020 7730 3300

**Law Society:** [www.lawsociety.org.uk/choosingandusing/findasolicitor.law](http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law)

**Legal Services Commission:** [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

**NCB:** [www.ncb.org.uk](http://www.ncb.org.uk)

**Parentline Plus:** parenting advice: 0800 800 2222

**Young Minds:** advice on mental health issues: 0808 802 5544

ACE is a charity and depends on grants and donations to operate our advice service. If you have found our advice helpful and would like to make a donation please visit [www.ace-ed.org.uk](http://www.ace-ed.org.uk)  
Thank you.

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