School Attendance Team

Attendance Policy

Penalty Notices - Code of Conduct

September 2019
Penalty Notices (Unauthorised Absence, Leave and Exclusion)

Code of Conduct

1. Legal Basis

1.1 This code ensures that penalty notices for unauthorised absence or exclusion are issued consistently and fairly in order to comply with the Human Rights Act and all Equal Opportunities legislation. For children attending schools in the Peterborough City Council area, it is only officers of Peterborough City Council who may issue a penalty notice. This will ensure consistent and equitable delivery, avoid duplication of issue, allow schools to maintain good relationships with parents and ensure that they reinforce other enforcement sanctions.

1.2 In cases of unauthorised absence, Section 444 of the Education Act 1996 states that if a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school then her/his parent/carer is guilty of an offence.

1.3 Compulsory school age is defined as beginning from the start of the first term commencing after the child’s following their fifth birthday (or on their fifth birthday if it falls on a prescribed day). Therefore:

- For children born between 1 September and 31 December, they reach compulsory school age on 31 December and must be receiving full-time education at the start of the Spring term (i.e. after the Christmas holidays, in January).
- For children born between 1 January and 31 March, they reach compulsory school age on 31 March and must be receiving full-time education by the start of the Summer term (i.e. after the Easter holidays, in March or April).
- For children born between 1 April and 31 August, they reach compulsory school age on 31 August and must be receiving full-time education at the start of the new school year (i.e. after the summer holidays, in September).

1.4 The education-related provisions of the Anti-social Behaviour Act 2003 apply to all parents who fall within the definition set out in section 576 of the Education Act 1996. ‘Parent’ means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, irrespective of Parental Responsibility has care of a child or young person. In essence, 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.

1.5 Sections 444A and 444B of the Education Act 1996 introduced penalty notices under Section 23 of the Anti-social Behaviour Act 2003. A penalty notice is an alternative to prosecution under Section 444 and enables parents to discharge potential liability for that offence by paying a penalty. There is no legal requirement for there first to have been a penalty notice before proceeding to prosecution. If a parent fails to pay the penalty notice the prosecution that follows will be for the offence not for the non-payment.

1.6 In cases of exclusion, Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of any fixed period or permanent exclusion.
1.7 The days of exclusion when this duty applies are known as the ‘specified days of exclusion’ and will be detailed in a notice given to the parent under Section 104 of the 2006 Act (the designated notice). The Section 104 notice will also specify what the arrangements will be for the full-time education of the excluded pupil if the pupil is excluded for 6 days or more. The parent is responsible for the child during the first five days of the exclusion.

1.8 Section 105 of the 2006 Act allows for a penalty notice to be given to a parent guilty of an offence under Section 103. The penalty notice allows a parent to pay a penalty as a way of discharging any liability for the offence of failing to ensure that their child is not present in a public place on the days specified in a notice given to them.

1.9 In cases relating to exclusion the Local Authority will consider a request for a penalty notice from Headteachers, Deputy Headteachers, Police Officers and Police Community Support Officers. In cases of unauthorised absence the Local Authority will consider a request for a penalty notice from Headteachers and Deputy Headteachers.

2. Circumstances where a penalty notice may be issued by the LA

2.1 A penalty notice can be issued if one of the following criteria can be met:

- Level of unauthorised absence leads to an unauthorised absence rate of 10% or more within a minimum period of any 8 school weeks (A maximum of 2 penalty notices may be issued in any academic year);
- A single unauthorised absence event of at least 2 consecutive school days (4 consecutive sessions);
- Persistent late arrival at school after the register has closed contribute to a level of unauthorised absence at 10% or above (registers should be closed after a period of time agreed by the school but no more than 30 minutes after they have opened. We recommend that this should be no more than 20 minutes);
- Lack of adherence to the dates agreed for any authorised leave of absence without reasonable justification;
- Pupils identified in a public place whilst excluded from school (during the first five days of the exclusion period) without reasonable justification.

2.2 More than 1 instance of unauthorised absence contributing to an unauthorised absence rate of 10% or above in a minimum eight school week period:

If there have been at least 8 sessions of unauthorised absence, usually containing more than one instance, which may include persistent late arrival (arrival after the register has closed and coded ‘U’), or an unauthorised single absence event (usually a holiday) as described in 2.1 above, the school will complete a request for a penalty notice to be considered.

A meeting should have been attempted wherever possible with the parents/carers to discuss any absences and a warning letter will have been sent to each parent/carer. The parents/carers will be required to ensure that their child attends over a 30 school day period (15 days for Y11 in the spring term) where there should be no unauthorised absences. If there are any unauthorised absences within this period then a penalty notice may be issued to each parent/carer at the point of the first unauthorised absence.

If the monitoring period ends without further unauthorised absence the parent/carer may receive a letter explaining that a penalty notice will not be issued on this occasion. The letter will also contain an expectation that the improved attendance should continue and that if there are further unauthorised absences following this letter, a penalty notice may be issued or legal action under section 444 Education Act 1996 taken.
2.3 **Leave of absence in term time which has not been authorised by the school**

Amendments to the 2006 regulations remove references to family holiday and extended leave as well as the statutory threshold of ten school days. However, code G continues to refer to holiday absence. The amendments make it clear that Headteachers **may not** grant any leave of absence during term time **unless there are exceptional circumstances**. Headteachers should determine the number of school days a child can be away from school if the circumstance is considered to be exceptional and the leave is granted.

All schools should have a clear policy and procedure for granting leave of absence. This information should be included within the school’s Attendance Policy which should be easily accessible to parents and be drawn to their attention on an annual basis. We strongly advise that the school should include the number of days/sessions that the school will be considering.

The following factors should be considered when deciding if a request for leave should be authorised or not:

- Whether there are exceptional circumstances relating to the request for leave;
- Whether the application was made in advance to the Headteacher by a parent/carer with whom the pupil normally resides;

2.4 **Pupil is identified in a public place whilst excluded from school (during the first five days of the exclusion period) without reasonable justification**

It is important that parents/carers are notified of their responsibilities and possible consequences should they fail to meet them. The Section 104 Notice (exclusion letter from Headteacher) must therefore inform a parent/carer of their duty under Section 103.

There will be some circumstances where it may be necessary for a child to be in a public place during school hours on a day when they are excluded. For example, the child may have a pre-arranged medical appointment or there may be a medical emergency which needs immediate attention. In all cases it will be for the parent to prove reasonable justification. A justification which is capable of being reasonable will depend upon points of fact and proof and may ultimately be decided by the Courts.

3. **Circumstances where a penalty notice may not be issued by the LA.**

3.1 There are very few circumstances that the LA may refuse a request from a school to issue a penalty notice, however the following are examples, although not exhaustive:

- The penalty notice request form has not been completed correctly;
- The paperwork is inaccurate or missing;
- The Attendance Certificate is not coded correctly or has missing marks;

All of the above can be rectified by the school and resubmitted.

3.2 In very extreme cases the LA may refuse to issue a penalty notice to a parent/carer where records show that they have been to court and convicted of the lesser offence under Section 444 (1) on at least two previous occasions.

In these cases the recommendation of the LA is that the case is escalated either by the school or academy or referred to the LA for consideration of the higher offence, Section 444 (1a). This requires an interview under caution and can be carried out by the relevant trained officer in the school or academy or referred to the LA using the relevant referral form (Appendix 9a).
4. **Procedure for issuing a penalty notice**

4.1 These procedures apply to the parents/carers of children of compulsory school age who are registered at a maintained school, pupil referral unit, or an Academy and those attending alternative provisions.

4.2 As with prosecutions under Section 444 Education Act 1996, a penalty notice may be issued to each parent/carer liable for the offence or offences (where there is more than one child involved).

4.3 A penalty notice can only be issued to a parent/carer who is an individual. Where a child is in the care of the Local Authority or other agency, the Local Authority or other agency is not classified as a ‘parent’ for the purposes of considering whether to issue a penalty notice. A penalty notice cannot therefore be issued in these cases.

4.4 The School Attendance Team may receive requests to issue a penalty notice from Headteachers, Acting Headteachers, Deputy Headteachers, Police Officers and Police Community Support Officers. The School Attendance Team may issue the penalty notice provided that it meets at least one of the criteria set out in 2.1 above. Requests from the school should be made within 4 school weeks of the last date of absence or at the end of the monitoring period on the penalty notice Request Form and will be considered by the Local Authority in line with the penalty notice Checklist.

4.5 Where the penalty notice relates to Non School Attendance, the school should have attempted to hold a meeting with the parent/carer, to which an Attendance Officer may be invited at the school’s discretion. Penalty notices for will only be issued when the school or the Local Authority has given the parent/carer formal written warning of the possibility of a notice being issued. The exception to this is during Truancy Sweeps or where single absence events if at least 2 consecutive school days (4 consecutive sessions).

4.6 For a penalty notice to be issued in relation to a child found in a public place during the first five days of an exclusion, the school must have given the parent/carer notice of their duty under Section103 of the Education and Inspections Act 2006. There is no monitoring period for the issue of these penalty notices.

4.7 In relation to an individual pupil, a parent/carer will not receive more than 2 separate penalty notices resulting from unauthorised absence or from a child being found in a public place during the first five days of each fixed period or permanent exclusion, in any academic year. Penalty notices will be issued to each parent/carer, in respect of each child concerned.

4.8 Penalty notices will only be issued to a parent/carer by first class post, at the address held by the School/Academy.

4.9 In any case where the penalty is not paid within 28 days of issue, the School Attendance Team will instigate statutory action under Section 444 (1) of the Education Act 1996, unless the penalty notice has been withdrawn.

5. **Procedure for withdrawing a penalty notice**

5.1 A penalty notice can only be withdrawn by The School Attendance Team where:

- it ought not to have been issued, i.e. it was issued outside of the terms of the local code of conduct; or
- it has been issued to the wrong person;
- it contains material errors;
5.2 Where a penalty notice is withdrawn in accordance with the above, a notice of the withdrawal shall be sent to the recipient and any amount already paid by way of penalty shall be repaid to the person who paid it.

5.3 Where a penalty notice has to be withdrawn due to errors on the part of the school, an administrative charge as per the current scale of charges will be levied upon the school by the Local Authority (see Appendix 11).

Schools are responsible for informing their linked officer if they have requested a penalty notice and the parents/child moves address during the process.

6. Payment of penalty notices

6.1 Details of arrangements for the payment of penalties will be detailed on the penalty notices. Penalties should be paid in full, in one instalment, to the Local Authority and are retained to cover costs of issuing, enforcing or prosecuting recipients who do not pay.

6.2 The penalty is £120 if paid within 28 days of receipt of the notice, but reduced to £60 if paid within 21 days of receipt of the notice, as set out in The Education (Penalty Notices) (England) Regulations 2007. If the penalty is not paid in full by the end of the 28 day period the Local Authority, in accordance with the Department of Education, must either prosecute for the offence or withdraw the notice. Prosecution is for the offence to which it relates rather than for non-payment of the penalty notice.

The decision to prosecute ultimately lies with Peterborough City Council Legal Services, who will consider whether the prosecution is in the Public Interest.

Peterborough City Council will retain all revenues (Section 105 of the Education and Inspections Act 2006) from the issuing of penalty notices in order to cover the costs of issuing and enforcing notices, the cost of prosecuting those recipients of the notices who fail to pay and to contribute to the continuation of providing attendance support and guidance to all schools. This is a legal requirement.