

Penalty Notices **Code of Conduct**

Legislation

- Section 23 of the Anti Social Behaviour Act 2003 introduced amendments to s444 Education Act 1996 to empower designated LA officers, Headteachers (and Deputy or Assistant Headteachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school. Section 105 of the Education and Inspections Act 2006 enables Penalty Notices to be issued to parents of excluded children who breach the duty to ensure that their child is not present in a public place during the first five days of exclusion. Revised regulations and guidance relating to Penalty Notices in cases of truancy and exclusions came into force on 1st September 2007. The Local Authority is responsible for drawing up a local Code of Conduct after consultation and in accordance with the Regulations.
- For the purposes of the protocol, the legal definitions of 'parent' are;
 - Any natural parent, whether married or not
 - Any parent who, although not a natural parent, has parental responsibility as defined in the Children Act (1989) for a child or young person
 - Any person who, although not a natural parent, has care of a child or young person

Rationale

- Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. In law an offence occurs if a parent/carer fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school. Penalty notices supplement the existing sanctions currently available under Section 444 Education Act 1996 or Section 36 Children's Act 1989 to enforce attendance at school where appropriate.
- Parents and pupils are supported at school at LA level to overcome barriers to regular attendance through a wide continuum of assessment and intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the problem. Sanctions are used as a means of enforcing attendance where it is likely that their use will secure an improvement.
- Waltham Forest Behaviour, Attendance and Children Missing Education Service will continue to investigate cases of irregular school attendance and following appropriate case work will instigate legal action if applicable. In order to comply with human rights legislation, it is essential that Penalty Notices are issued in a consistent manner. This Code of Conduct will govern the issuing Penalty Notices in respect of

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unauthorised absence from school and failure to ensure an excluded child is not present in a public place without reasonable justification within the first five days of the exclusion period.

- It is possible that certain cases of unauthorised absence (or the presence of an excluded child in a public place) can be dealt with by way of a Penalty Notice. Penalty Notices will involve the recipient paying a fine, currently set at £60.00 if paid within 21 days or £120.00 if paid within 28 days. Where an unauthorised absence has been dealt with by way of Penalty Notice and the Penalty Notice has been paid, it is not possible for a parent to be prosecuted for the same period of unauthorised absence under Section 444(1A) of the Education Act 1996 or for the same instance of an excluded child being present in a public place under Section 103 of the Education and Inspections Act 2006.

1. **Who May Issue A Penalty Notice**

- The Local Authority will issue penalty notices in line with the code of conduct where absence from school meets the minimum evidential requirement and it is deemed appropriate. Head-teachers and other authorised persons in school and Police officers during a truancy sweep in respect of excluded pupils in public places may issue Penalty Notices. In Waltham Forest council, penalty notices for non-attendance will be issued by the Behaviour, Attendance and Children Missing Education Service. The Service will ensure that the issuing of penalty notices is closely monitored with recipients paying the relevant fine. In cases where the penalty is not paid within the appropriate period, the BACME service will consider instigating action through the court as required by legislation. Schools will be notified of the outcome in relation to payment and any legal action taken.

Circumstances Where A Penalty Notice May Be Issued

The issuing of Penalty Notices may be appropriate in the following circumstances:

Absence from school

- In cases of overt truancy.
- In cases of leave during term time, where the absence has not been authorised by the school. (3 days continuous – G code)
- In cases where an absence during term time has been agreed by the school, and a child fails to return by the deadline stipulated.

Lateness

- In cases where a child persistently arrives at school after the register has closed. (12 lates within a term – U code)

Following a Truancy Patrol

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- Penalty Notices will not be issued during a truancy patrol but enquiries will be undertaken with the school of any pupil stopped. In cases where the school has recorded an unauthorised absence and where the pupil has been stopped on a previous truancy patrol within the past twelve months, a Penalty Notice may be issued.

Excluded Children

- Where a child has been excluded from school and is found in a public place during school hours without reasonable justification within the first five days of the exclusion period.
- Reasonable justification will be assessed on the individual circumstances of each case but may include medical emergency of parent or child or pre-arranged medical appointment.
- Unreasonable justification would be regarded as such if no clear evidence has been provided by the parent/carer as to why the excluded child is found to be in a public area within the first five days of the exclusion period.

Procedures for issuing Penalty Notices

- Before being issued with a Penalty Notice, a parent should normally have received a written warning detailing the consequences of continued unauthorised absence or the taking of unauthorised holidays in term time, or in the case of exclusion, the consequences of a child being in a public place within the first five days of exclusion.
- The warning may be issued through general or specific school correspondence, incorporated in an exclusion letter, or issued by the Behaviour, Attendance and Children Missing Education Service.
- Primary responsibility for issuing Penalty Notices rests with the Behaviour, Attendance and Children Missing Education Service. Behaviour, Attendance and Children Missing Education Service will receive requests from schools to serve Notices and will do so when the circumstances of the pupil's absence or exclusion meets the relevant criteria. This request must be submitted within 2 weeks of the child returning to school and in accordance with the Waltham Forest Code of Conduct, to issue the penalty notice.
- The Behaviour, Attendance and Children Missing Education Service will maintain a record of all notifications and make an assessment of individual circumstances.
- In order to avoid the issue of duplicate Notices, in exceptional circumstances where a school or police officer intend to issue a Notice themselves, a check must first be made with the Behaviour, Attendance and Children Missing Education Service. This will avoid the possibility of parents receiving Penalty

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Notices from more than one source in respect of the same period of unauthorised absence.

- A parent will not usually receive more than two Penalty Notices resulting from the unauthorised absence of an individual child in any twelve month period. If unauthorised absence persists after the issue of the first Penalty Notice, it will usually be appropriate to prosecute through the magistrate's court
- In the case of excluded children being in a public place, there is no limit to the number of Penalty Notices that may be issued within a twelve month period.
- Requests from schools to issue Notices must be accompanied by full relevant information concerning the circumstances of the unauthorised absence and all other information necessary to assess whether the request falls within the parameters of the Code of Conduct.
- Penalty Notices are usually served by first class post to the parent at their home address.

Thresholds for Issuing Penalty Notices

- A Penalty Notice will normally only be issued where a pupil has failed to attend school regularly. This may comprise a series of single or half-day unauthorised absences or a block of unauthorised absence such as an unauthorised term time holiday. The LA will not issue a penalty notice for less than 3 days of school absence as in law this does not constitute irregular absence;
- **and** the LA is satisfied that there is evidence sufficient to show that an offence under Section 444 has been committed;
- **and** no Penalty Notice has been issued in relation to the child within the previous twelve months;
- **or** the LA is satisfied that there is sufficient evidence to show an offence has been committed under Section 103 of the Education and Inspections Act 2006.

Warnings

- A formal warning of the possibility of a Penalty Notice being issued will normally be served before issue of a Notice. This warning may take the form of a general warning letter sent out as part of the school's documentation and policies: a specific warning contained in the exclusion letter sent to the parents of a child permanently excluded from school: or a specific warning contained in a letter refusing to authorise term time holiday absence.

Payment

Details of arrangements for paying penalties will be set out in the Penalty Notices.

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Procedures for withdrawing Penalty Notices

Once a Penalty Notice has been issued, it may only be withdrawn by the local education authority in the following circumstances:

- The Notice has been issued to the wrong person.
- The Notice ought not to have been issued (for example where it has been issued outside the terms of this Code of Conduct or where no offence has been committed).
- Where the Notice contains material errors.
- In the circumstances of permanent exclusion, reasonable justification has been made out by the parent.

However, where the penalty has not been paid in full before the expiry of the period for paying it and the LA has decided not to institute prosecution proceedings, then the notice will be withdrawn.

The Behaviour Attendance and Child Missing Education Service and its local partners will review this Code of Conduct annually.

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