

**Worcestershire County Council  
Education Investigation Service**

# **Education Penalty Notice**

# **CODE OF CONDUCT**

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## **1. Rationale:**

Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them. The Education Investigation Service will continue to investigate cases of irregular school attendance by undertaking targeted interventions and, where appropriate, instigate legal action under the Education Act 1996 for unauthorised absence. A Penalty Notice will be a useful sanction at an early stage before attendance problems become entrenched and where the Local Authority considers that prosecution would be too heavy-handed.

Penalty notices relating to exclusion are a power available to local authorities from 1st September 2007, to help ensure parents fulfil their responsibilities to ensure their child is not out in a public place without reasonable justification during the first five days of every exclusion from school.

Worcestershire County Council has the responsibility for drawing up the Code of Conduct. The local code of conduct is a requirement of The Education (Penalty Notices) (England) Regulations 2007 and is there to ensure that the powers to issue penalty notices are applied consistently and fairly across the Local Authority area and that suitable arrangements are in place for the administration of the scheme.

Worcestershire County Council's Education Investigation Service discharges the responsibilities for taking legal action against parents/carers and is also responsible for the review and administration of the Code of Conduct.

Parents and pupils are supported by schools/alternative provision and by Worcestershire County Council to overcome barriers to regular attendance through a range of assessment and intervention strategies. Sanctions of any nature are of use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem

Sanctions are used as a means of enforcing attendance where there is reasonable expectation that their use will secure improvement.

## **2. Legal Frame Work**

The Education (Penalty Notice) (England) Regulations 2007 (Statutory Instrument 1867) in relation to offences under section 444 of the Education Act 1996. This replace The Education (Penalty Notice) (England) Regulations 2004 with effect from 1<sup>st</sup> September 2007

The Anti Social Behaviour Act 2003, Section 23, introduced section 444A and 444B into section 444 of the Education Act 1996. These sections enable Penalty Notices to be issued as an alternative to prosecution in the Magistrates Court under section 444 Education Act 1996 and allows parents to discharge liability for conviction of that offence by paying the penalty.

The Education and Inspections Act 2006, Section 103 places a duty on parents in relation to an excluded pupil, to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of every fixed term and permanent exclusion. These days are known as the “specified days of exclusion”. Section 104 of the Act requires schools to notify parents in writing that they are responsible for the child during these days. Section 105 allows for a penalty notice to be issued to a parent guilty of an offence under section 103 (3).

The Act empowers designated Local Authority Officers, Head Teachers, Deputy Head Teachers and Police to issue Penalty Notices in case of unauthorised absence from school in line with the Local Authority's code of conduct for Penalty Notices.

The Local Authority and any persons authorised to issue Penalty Notices must have regard to the Human Rights Act 1998, Disability Discrimination Act 1995 and Sex Discrimination Act 1975 and the Equality Act 2006 and the Special Educational Needs Code of Practice.

The Education (Penalty Notices) (England) (Amendment) Regulations 2012 came into force on 1<sup>st</sup> September 2012 and these Regulations increase the amount of a Penalty Notice from £50 to £60 (if paid within 28 days) and from £100 to £120 (if paid within 42 days).

The Education (Penalty Notices) (England) (Amendment) Regulations 2013 (Statutory Instrument No 757) came into effect on 1<sup>st</sup> September 2013. For a period of absence that is alleged to have taken place wholly from 1<sup>st</sup> September 2013 onwards, these shorten the payment period during which a Penalty Notice may be paid: the Penalty Notice is £60 if paid within 21 days and £120 if paid within 28 days.

### **3. Circumstances where a Penalty Notice may be issued**

A Penalty Notice can be issued in cases of unauthorised absence from school and in respect of any excluded child found in a public place during school hours ‘without reasonable justification’ in the first five days of the exclusion.

The Education Investigation Service will generally only issue a Penalty Notice if it is an appropriate sanction for unauthorised absences from school or for a child's presence in a public place during school hours without reasonable justification, for example where the parent/carer has failed to make adequate arrangements for that child during their exclusion.

It is the parent(s)/carer(s) responsibility to prove reasonable justification to the Authority and they may be asked to produce evidence of matters upon which they intend to rely (e.g. doctor's certificate or confirmation of a hospital visit). Whether parental justification is reasonable is a matter for the Authority to decide upon, taking account of individual circumstances advanced by the parent. Parents will be given the opportunity to provide reasonable justification prior to issuing the penalty notice.

The issuing of a Penalty Notice is considered appropriate in cases of;

- An excluded child is found in a public place during the school hours of the first five days of exclusion
- Overt truancy is detected (including being caught on truancy sweeps)
- Parentally condoned absence is evidenced
- Unauthorised leave of absence has been taken (unauthorised family holidays)
- Delayed return from leave of absence without prior school agreement
- Persistent late arrival at school (after the register has closed)

Other than in specific circumstances, penalty notices will only be issued to a parent(s) if the pupil has at least 10 unauthorised absence sessions recorded against their name within the previous 60 school sessions (i.e. equivalent of 5 school days in any 6 school week period). In these cases parent(s) will be issued with a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 15 school days within which there should be no further unauthorised absence sessions. Where the parent(s) fail to comply with the warning a Penalty Notice will be issued.

Specific circumstances to the above may include:

Leave of absence in term time for which no permission has been sought from the school, or permission sought was refused, or child has not returned by the agreed date and no acceptable reason for delay has been received, and where a child has been encountered on more than one truancy patrol and the absences were unauthorised.

Where more than one child in a family is involved multiple Notices may be issued. There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Penalty Notice. Where a Penalty Notice is used for unauthorised absence there will be a restriction of no more than two per parent per academic year.

The use of a Penalty Notice allows a parent/carer to discharge their liability for an offence under section 444 of the Education Act 1996 and 103 of the Education and Inspections Act 2006 by the payment of a fine. If the fine remains unpaid at the end of the 28 day payment period, the matter will automatically proceed to court for prosecution of the original offence unless the notice is withdrawn and the parent/carer will be notified in writing.

#### **4. Procedures for Issuing Penalty Notice**

The issue of Penalty Notices will be administered by the Education Investigation Service to ensure compliance with the Regulations and that provisions of this code do not conflict with other forms of statutory intervention pursued by the Education Welfare Service.

Penalty Notices will always be issued by first class post as there may be health and safety implications involved in the operation of direct delivery.

With certain exceptions, parents will receive a warning letter before a Penalty Notice is issued. Exceptions may include unauthorised leave of absence in term-time and where a child has been encountered on more than one truancy patrol. The warning letter will indicate the period of time over which improvement is expected (usually 15 school days) and the consequences of failing to ensure regular attendance.

The Education Investigation Service will consider requests to issue Penalty Notices from schools/college in the local authority and the local Constabulary.

The Education Investigation Service will action these requests providing a signed attendance certificate from the head teacher is received with a declaration confirming that:-

- The circumstances of the case meet the criteria for the issue of a Penalty Notice, as specified in the Code of Conduct, and
- All necessary information is provided to the Education Investigation Service in order to establish that an offence under Section 444 (1 /1A) Education Act 1996 has been committed, and
- In the case of an unauthorised period of leave of absence, supporting evidence is provided that clearly details the reasons permission has not been granted by the Head teacher.

Worcestershire County Council advises that schools/alternative education providers maintain a clear, consistent and robust approach towards granting leave of absence for exceptional circumstances (family holidays in term time), in line with their Attendance and Equal Opportunities policies and the Human Rights Act.

Primary responsibility for issuing Penalty Notices rests with the LA. Penalty Notices will only be issued subject to approval by the Education Investigation Manager, or Senior Education Investigation officer(s)

No parent will receive more than one Penalty Notice resulting from the unauthorised absence of an individual child in any twelve month period, unless the absence is due to unauthorised leave of absence, or the child being encountered for a second or subsequent time on a truancy patrol.

A Penalty Notice would not usually be issued in cases where a parent has been subject to previous conviction under Section 444(1) or (1A) Education Act 1996, within the previous year.

Within this Code of Conduct, parent is as defined in Section 576 Education Act 1996.

The collection of payments and issuing of receipts will be administered by the Education Investigation Service on behalf of the Local Authority with support from the Finance department.

## **5. Procedure for the Withdrawal of a Penalty Notice**

Once issued a Penalty Notice can only be withdrawn in the following circumstances;

- The notice has been not been issued in accordance with the code of conduct.
- Evidence has been established that the notice was issued to the wrong person.
- The parent has provided evidence that they did not receive the notice (e.g. the notice was sent to the wrong address).
- There are material errors in the information leading to the issue of the Penalty Notice.
- The period for payment has expired and the Local Authority does not intend to institute legal proceedings for offence to which the Penalty Notice relates.

## **6. Payment of Penalty Fines**

Arrangements for payment will be detailed on the Penalty Notice.

The fine payable within 21 days of service of the Penalty Notice is £60 and within 21 to 28 days is £120. The payment period expires after 28 days.

Revenue generated from the Penalty Notices will be used to cover the costs of issuing and enforcing notices, or the cost of prosecuting recipients who do not pay. Any surplus will be surrendered to the Secretary of State.

If not paid in full by the end of the 28 day period the Local Authority will commence legal proceedings for the offence under Section 444(1) of the Education Act 1996, or under the provisions of Section 103(3) of the Education and Inspections Act 2006

If following the period of payment the matter is not going to proceed to court for the original offence then a letter of withdrawal will be sent to the parent/carers informing them the matter has been withdrawn following non-payment during the designated period.

## **7. Policy and Publicity**

Deployment of Penalty Notices as a sanction is included in Worcestershire County Council's Inclusion and Attendance Strategies.

All school/alternative provision Attendance Policies should include information on the deployment of Penalty Notices and this should be brought to the attention of parent(s) on a regular basis.

## **8. Reporting and Review**

Review of this code of conduct will take place every three years or more often if required by legislative changes. Review may involve consultation where it is considered appropriate.