
PENALTY NOTICES

CODE OF CONDUCT

Derbyshire County Council

Education Service

DERBYSHIRE COUNTY COUNCIL

EDUCATION SERVICE

PENALTY NOTICES

Code Of Conduct under the Provisions of the Education (Penalty Notices) Regulations 2004 and Section 23 of the Anti-Social Behaviour Act 2003

CONTEXT

1. Parents have a legal obligation to ensure that their child receives efficient full-time education suitable to the child's age, ability, aptitude and to any special educational needs the child may have. The County Council therefore has a statutory obligation to challenge parents who are failing in their duty and this includes a wide range of legal powers to intervene. The principal aim of these interventions is to ensure that children attend school regularly and punctually so that they can benefit fully from the educational opportunities presented by their school.
2. Where attendance is not regular or punctual, the Educational Welfare Service (EWS) will intervene to support parents and, in the last resort, to apply legal remedies including prosecution. The service works in close partnership with schools and other key stakeholders to promote inclusion and to ensure that relevant and purposeful measures are taken to reduce absence. This code has been developed on the basis of that continuing partnership.
3. New legislation has increased the range of intervention available. The Anti-Social Behaviour Act 2003 has introduced additional remedies including the power to issue penalty notices to the parents or carers of pupils who take unauthorised absence from school. Penalty notices offer the opportunity for swift intervention to combat parentally condoned absence before it becomes entrenched.

PURPOSE

4. The purpose of this Code of Conduct is to ensure that:
 - The powers available under the legislation are applied fairly and consistently across the county and
 - Suitable arrangements are in place for the smooth administration of the scheme

This code sets out the principles on which the County Council will operate these powers.

LEGISLATION AND GUIDANCE

Legal Basis for Issuing Penalty Notices¹

5. The Anti-Social Behaviour Act 2003, section 23, sub-section (1) adds two new sections (444A and 444B) after section 444 of the Education Act 1996. These new sections introduce penalty notices as an alternative to prosecution under section 444 and enable parents to discharge potential liability for conviction for that offence by paying a penalty. The offence of irregular attendance has not changed.
6. The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed (42 days² after receipt of the notice) and cannot be convicted of that offence if they pay a penalty in accordance with the notice.
7. The penalty is £50 if paid within 28 days of receipt of the notice, rising to £100 if paid after 28 days but within 42 days of receipt of the notice (a notice served by post is deemed to have been received on the second day after posting it by first class post). If the penalty is not paid in full by the end of the 42 days the LEA must either prosecute for the offence to which the notice applies or withdraw the notice (which can only be done in limited circumstances). Unlike other penalty notice schemes, the prosecution is not for non-payment of the notice. If there is a prosecution, it will follow the usual procedures of a prosecution for irregular attendance. Prosecutions will be brought by the LEA under section 444 of the Education Act 1996.

Definitions

8. For the purposes of the Code, the following legal definitions will apply:

Compulsory School Age

A pupil is of compulsory school age from the beginning of the school term commencing on or after a child's fifth birthday until the last Friday in June of the school year in which the pupil becomes sixteen years of age.

Parent

A parent is:

- Any natural parent, whether married or not

¹ See Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices, DfES, 2004

² "Days" refers to calendar days within this document unless otherwise indicated

- Any parent who, although they are 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. 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

References to 'parent' within the Code mean each and every parent coming within this definition, whether acting jointly or separately.

Unauthorised Absence

Unauthorised absence is any absence that does not fall within the prescribed reasons for authorisation. One unauthorised absence refers to a half-day session or part of a half-day session, where the child either fails to attend or arrives after the close of registration.

Other Provisions

9. In addition to the Anti-Social Behaviour Act 2003, a wide range of other legal provisions applies to the issuing of penalty notices. The Code takes account of these provisions, which are set out at **Appendix 1**. Those persons authorised to operate this code must have regard to the provisions of this legislation.

CIRCUMSTANCES WHEN A PENALTY NOTICE MAY BE ISSUED

10. A penalty notice may be suitable for use in circumstances of parentally condoned absence, where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so. It will be particularly useful as a sanction at an early stage before attendance problems become too entrenched and where the LEA considers that a prosecution would be too heavy handed. It may be issued in the following circumstances:

- As a result of any term-time holiday not authorised by the school
- As an alternative to court prosecution
- As a result of a truancy sweep where there is other evidence that meets the LEA criteria for unauthorised absence

The EWS has the discretion to identify other circumstances where a penalty notice may be used as a suitable intervention as part of its ongoing casework.

Term-time Holidays

11. The Education (Pupil Registration) Regulations 1995 enable headteachers to grant up to ten school days' authorised absence for the purpose of holidays during term time. Other than in exceptional circumstances, no parent shall be granted more than ten school days' leave of absence in any one school year. It is for headteachers to make known the school's expectations (for example, in the school prospectus) and to determine whether or not such a request is reasonable.
12. Each request should be judged on a case-by-case basis and headteachers should be sparing in the use of their discretion. It is important that headteachers do not fetter their discretion by applying policies (for example, blanket bans) that might suggest that each application has not been considered on its merits. Separate guidance published by the LEA sets out the factors to be taken into account in exercising this discretion.
13. The EWS will serve a penalty notice for any period of holiday during term time that has not been authorised by the headteacher. Moreover, the EWS may do so without any further recourse to assessment or casework with the pupil or family. There will be no requirement for:
 - The EWS to offer support
 - Any formal warning
 - The absence threshold to be met

In such a case, each parent will receive a separate penalty notice for each child taken out of school.
14. In declining any request for holidays to be taken in term time, therefore, the headteacher should warn parents that not only will the absence be categorised as unauthorised but also that each parent will be served with a penalty notice for each child without any further warning or intervention.
15. Where parents take holiday during term time without notifying the school, it may be necessary to unauthorise the absence. In so doing, the headteacher will send all details of relevant communications to the team manager of the Area EWS. This should include records of any meetings with parents and comment on the impact of the additional absence on the education and achievement of the child or children in question.

Other Circumstances

16. With the exception of term time holidays, all identified cases will need to meet at least one of the following minimum criteria:
 - Twenty consecutive sessions (two consecutive weeks) of unauthorised absence
 - Five sessions of unauthorised absence in a five week period

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- Ten sessions of authorised absence for reasons of illness spread within a five week period where no medical evidence has been received

These criteria constitute the LEA's threshold for unauthorised absence and, with the exception of term time holiday, the trigger for considering whether to issue a penalty notice.

17. The criteria will be applied in considering any referral from a school, other agency (e.g. Police or Social Services) or other local education authority. The EWS will accept the referral and, before taking action, will check to see whether:

- The threshold on absence has been met
- The school has made reasonable attempts to contact the parent and has evidence to show this
- There has been no improvement in attendance
- The parent has given unsatisfactory reasons for the absence and
- There is an up to date attendance record available

Whatever the source, the referral will have to be properly documented in the form provided, which will be in a prescribed format common to all partner agencies.

PROCEDURES

Issuing Penalty Notices

18. The procedures for issuing penalty notices fall within the well-established framework operated by the EWS, as set out in their Good Practice Guide. The procedures in the Guide ensure systematic intervention to the point where the threshold for statutory action has been reached. These interventions include:

- Close partnership working with schools to enable relevant and purposeful action to be taken at school level
- Careful assessment of referrals to agreed standards with appropriate documentation
- Relevant levels of external support, including action planning, governed by a Service Level Agreement with schools
- Fast tracking where the agreed criteria are met
- Escalation to management for consideration of statutory action including Education Supervision Order, Penalty Notice or Adult Prosecution.

19. Where the criteria have been met, statutory action will be taken unless:

- One of the following statutory defences applies:
 - The absences are authorised
 - The child was sick and evidence from a School Medical Officer (SMO) is provided

- The day is set apart for religious observance
 - The designated school is not within walking distance of the child's home and no transport has been provided by the authority
 - Other unavoidable cause
- There is some improvement in attendance and confidence that further improvement is likely
 - There is evidence of child protection issues
 - There is evidence of bullying
 - Other agencies are involved, requiring further investigation
 - The child is in statutory public care
20. Where a penalty notice is being considered, parents will receive one written warning (issued by the EWS) that failure to improve attendance will result in a fine and may lead to prosecution. Depending on the circumstances of the case, the warning will indicate the period of time over which improvement is expected (normally 15 days) and will be given in the format prescribed in the regulations together with advice on how to make representations to the LEA. These procedures will apply in all cases with the exception of unauthorised term-time holidays.
21. The EWS will be responsible for issuing all penalty notices. This will avoid the possibility of parents receiving penalty notices from more than one source for the same period of unauthorised absence and will ensure there is no conflict with current legal proceedings or ongoing casework. Also, as the LEA must retain the revenue generated by the scheme to fund its operation, it would not be reasonable to expect schools or the police to bear the burden of responsibility for issuing notices and the associated costs.
22. Penalty notices will normally be issued by first class post.
23. No parent will be issued with more than two penalty notices per child in any one twelve month period. Thereafter, parents will be liable to other statutory action including prosecution.

Monitoring and Taking Legal Proceedings

24. The EWS will monitor all cases where penalty notices have been issued. This will include monitoring that:
- There is no duplication
 - Penalty notices are not issued when court proceedings are pending
 - The maximum number to be issued, i.e. two per child per parent in any twelve month period, is not exceeded

25. The EWS will keep a central record of all notices issued, including:

- A copy of each notice
- A record of all payments made and on what dates
- Whether the notice was withdrawn and on what grounds

The EWS will send the school a copy of the notice and keep the school notified of the outcome.

26. Payment of a penalty notice will discharge liability for prosecution for the offence to which the notice relates. Where, however, a penalty notice is not paid within the prescribed period, prosecution will be instigated. Prosecution will be brought under Section 444 of the Education Act 1996.

27. The EWS will be responsible for managing the processes required for statutory action, including:

- Preparing court proceedings
- Marshalling evidence (including Section 9 Statements)
- Assembling documentation

If a penalty is not paid, the LEA will use the fact that a notice was issued and unpaid in any prosecution arising from the non-payment.

28. The LEA will not use evidence of penalty notices that have been issued and paid except as permitted by sections 101 to 106 of the Criminal Justice Act 2003. This includes, for example, the use of such evidence where:

- It has been agreed by all parties
- It is necessary to contradict a false impression given by the defendant
- The defendant attacks the character of another person

This will become possible when sections 98 –101 of the Criminal Justice Act come into force (to be confirmed).

Revenue

29. Penalty notices will be issued in a prescribed format. Parents will be able to make payment through a variety of methods specified in the notice. The revenue will be collected and managed by the County Treasurer's division.

30. Within this code, there is:

- No reminder of non-payment
- No opportunity to pay in instalments and
- No right of appeal

Failure to pay will result in prosecution.

31. The EWS will produce an annual audited statement of revenue collected from penalty notices. The revenue will only be used to cover the costs of administering the scheme or bringing a prosecution of non-payment. Any surplus will be surrendered to the consolidated fund.

WITHDRAWAL

32. The LEA will only withdraw a penalty notice in the following two circumstances:

- Where it ought not to have been issued (i.e. where it has been issued outside the terms of this code or where no offence has been committed) or
- Where it has been issued to the wrong person

If a parent believes that either circumstance applies, then the parent should contact the LEA immediately with evidence to that effect. A Senior Officer, taking legal advice if necessary will review the evidence. If the evidence clearly demonstrates that the penalty notice was issued in error, then the LEA will issue a notice of withdrawal.

In either event, the LEA will issue a Notice of Withdrawal to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it. No proceedings shall be instituted or continued against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under section 444(1A) of the Education Act 1996 arising out of the same circumstances.

EQUALITIES

33. The LEA will monitor the procedures for issuing penalty notices to ensure that they are applied fairly and consistently. In particular, it will ensure that the procedures do not discriminate against:

- Racial minority groups or any other individual in accordance with its obligations under the Human Rights Act, the Race Relations Act 1976 (as amended) and the Race Relations (Statutory Duties) Order 2001
- Disabled students under the Disability Discrimination Act 1995 and that
- Penalty notices are not issued to Traveller families where a parent would have a defence to prosecution under section 444 (1) of the Education Act 1996.

LEGISLATION AND GUIDANCE

The Race Relations Act 1976

Children Act 1989

Disability Discrimination Act 1995

Education (Pupil Registration) Regulations 1995

Education Act 1996

Crime and Disorder Act 1998

Data Protection Act 1998

Human Rights Act 1998

The Race Relations Amendment Act 2000

The Race Relations (Statutory Duties) Order 2001

Anti-Social Behaviour Act 2003

Criminal Justice Act 2003

Ensuring School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003

Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices 2004

The Education (Penalty Notices) (England) Regulations 2004