

City of York Code of Conduct for the use of Education Related Penalty Notices

Children's and Education, Children's services

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Penalty notice Protocol

1 Legal framework

1.1 Sections 444A and 444B of the Education Act 1996 (the act) empower authorised local authority (LA) officers, headteachers (or a member of school staff authorised by the headteacher), or the police to issue penalty notices (PNs) in cases of unauthorised absence from school. The authorised person must have reason to believe that a person has committed an offence under section 444(1) of the act. There is no right of appeal against a penalty notice and the imposition of one is not a criminal prosecution. As such, the requirement to consider an Education Supervision Order (ESO) is not necessary.

The Education (Penalty Notices) (England) Regulations 2007 (the Regulations) prescribe the necessary details for the operation of the penalty notice scheme. Regulation 14 provides that each local authority is responsible for drawing up a code of conduct to ensure consistency in the issuing of penalty notices. Therefore, it is the code of conduct, together with the relevant legislation and guidance, that will determine how the local authority should proceed in non-attendance matters and it may be subject to variation between local authorities.

The Department for Education have issued guidance for schools and local authorities, Working Together to Improve School Attendance

This sets out that the normal rules on school attendance would apply including:

- parents' duty to secure that their child attends regularly at school where the child is a registered pupil at school and they are of compulsory school age (regularly is defined as every day that the school is open unless the child is ill or leave of absence has been agreed by the school)
- schools' responsibilities to record attendance and follow up absence
- the availability to issue sanctions, including fixed penalty notices in line with local authorities' codes of conduct

1.2 The issuing of penalty notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.

1.3 The Local Authority (LA) has the prime responsibility for developing the protocol within which all partners named in the Act will operate.

2 Rationale

2.1 Regular and punctual attendance at school, or alternative provision, is both a legal requirement and essential for pupils to maximise their educational opportunities.

2.2 All schools wishing to issue penalty notices under this code of conduct must evidence that literature provided to parents relating to attendance, such as a school prospectus, attendance and behaviour policies, home to school agreements and website information are readily accessible and include the warning that parents may be issued with a penalty notice for any unauthorised absence, including unauthorised leave of absence such as for holidays, trips overseas etc). School governors should be in agreement with the endorsement of the use of penalty notices.

2.3 In law an offence occurs if a parent or carer fails to secure a child's attendance at the 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 of the Education Act 1996 or Section 36 of the Children Act 1989 to enforce attendance at school where appropriate.

2.4 Parents, carers and pupils are supported at school and at partner agencies level to overcome apparent barriers to regular attendance through a wide range of assessment and intervention strategies, for example via schools pastoral support systems and early help services.

Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem. They will be used as a means to support parents to meet their responsibilities in law and where there is reasonable expectation that their use will secure an improvement.

Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

Family circumstances and the ability to pay is judged against the likelihood of securing an improved attendance by issuing a penalty

notice (this to include any cases of possible multiple issue to any one family)

These measures are permissive and it is for individual governing bodies and the LA to decide whether to use them. In exercising these powers governing bodies, head teachers and local authority officers should have regard to their safeguarding duties.

2.5 Before requesting issue of a penalty notice for unauthorised persistent absence, schools must consider the Graduated Response for Persistent Absence in CYC schools.

Please note: This does not apply to term time leave or holiday.

3. Circumstances where a penalty notice may be issued

3.1 To ensure consistent practice penalty notices will be issued only in cases of unauthorised absence and may be considered in the following circumstances.

3.2 Persistent unauthorised absence.

Following a warning letter being sent, written invite to a school attendance panel with fair and appropriate targets set, a follow up letter following on from the panel and a reasonable monitoring period (three to four weeks) then a penalty notice can be issued.

A penalty notice can be requested if there have been at least, ten unauthorised absences in a 12 week period.

3.3 Unauthorised term time leave

The Education (Pupil Registration) (England) (Amendment) Regulations 2013, state headteachers may not grant any leave of absence during term time unless there are exceptional circumstances (no definition is given within this legislation). This has been supported by the Supreme Court judgement of April 2017 on unauthorised holidays taken in term time. <https://www.supremecourt.uk/cases/uksc-2016-0155.html>

In these circumstances where a headteacher does not authorise a request from a parent or carer for an absence they will respond to the request directly. This response will constitute a valid warning to the parent about a potential penalty notice. In all cases, a minimum of 10 sessions in total (five school days) of absence must have been accrued in the previous 12 weeks. In these circumstances, penalty notices will be

issued as they are not exceptional or unavoidable. The absences must be recorded as a 'G' code or "O" code in the attendance register. A copy of a letter to the parent or carer advising them that they are at risk of being issued with penalty notice should be on the school file.

The ten sessions must be full sessions and not include early finishes such as at the end of a school term.

(If parents have not applied in advance then, by default the absence is not agreed, as leave of absence cannot be approved retrospectively).

3.4 Unauthorised delayed return from extended holidays (the pupil fails to return on agreed date).

Following a warning, a penalty notice can be issued. In these circumstances, headteachers should make clear to parents and carers the date of when the pupil will be expected to return to school, warning them that if they fail to return on the date then a penalty notice may be issued.

3.5 Persistent late arrival at school (after the register has closed).

Following a warning letter being sent, written invite to a school attendance panel with fair and appropriate targets set, a follow up letter following on from the panel and a reasonable monitoring period (at least six weeks) then a penalty notice can be issued.

A penalty notice can be requested if there have been at least, ten unauthorised absences in a 12 week period.

The late mark (code U) for an unauthorised absence should be recorded.

3.6 Persistently late arrival (before the register has closed) (coded L).

Following a warning letter being sent, written invite to a school attendance panel with fair and appropriate targets set, a follow up letter following on from the panel and a reasonable monitoring period (at least six weeks) then a penalty notice can be issued.

A penalty notice can be requested if there have been at least, ten sessions in which the pupil arrived late.

3.7 Excluded pupils (fixed term or permanent)

A parent/carers is required to ensure that their child is not present in a public place during school hours, without reasonable justification, during

the first five days of each and every fixed period or permanent exclusion. A public place means any highway or any place to which the public have access.

N.B: School premises are not a public place for this purpose (Section 547 Education Act 1996).

A penalty notice enables the parent to pay a fine as a way of discharging liability for the offence of failing to ensure that their child is not present in a public place on the days specified in the notice given to them by the school. The parent must have been notified of their duty by the school at the time of the exclusion and the days to which it relates.

In order for the LA to issue a penalty notice, evidence would be required, either through eye witness testimony in the form of a Witness Statement, or proven evidence from a CCTV system.

The following documentation is required to be submitted to the LA:

- Proof of notification to parent/carer(s) and the means of delivery as above
- Witness statement including evidence of where the child was seen and the parent/carer(s) having no reasonable justification for their child being in a public place

3.8 There will be no restriction on the number of times a parent or carer may receive a formal warning of a possible issue of a penalty notice.

The maximum number of penalty notices is two per child, per parent, during a 12-month period.

In cases where families contain more than one poor-attending pupil, multiple issue may occur. This will be the subject of careful consideration and co-ordination.

3.9 In all cases involving a Looked after child the school must also send a copy of the warning letter to the child's social worker, as well as to the Director of Children's Services for the local authority which has responsibility for the child.

3.10 Request for penalty notices for pupils in Year 11 should be made before the end of the Spring term. Penalty notices for Y11 pupils will not be issued in the summer term.

4. Procedure for issuing penalty notices

4.1 In the City of York penalty notices can be issued by the School Attendance Adviser following a request from a headteacher (or a member of staff authorised by the headteacher such as a deputy or assistant headteacher) or police officer. This will ensure consistent and equitable delivery, protect school-home relationships and allow cohesion with other enforcement sanctions.

4.4 Schools can request the issue of a penalty notice, if the circumstances detailed within the code of conduct have been met.

For requests regarding persistent absence the following documentation needs to be submitted to fpn@york.gov.uk:

- Certificate of Attendance
- Leave of Absence application form - if appropriate
- Letter of refusal to the parent - if appropriate
- Warning letters (In cases of persistent absence at least two warning letters have been sent over at least a ten week period)
- Attendance panel minutes- (In cases of persistent absence at least one, preferably two, Attendance Panels have been held with at least one of these involving a member of Senior Leadership and/or a Governor)
- Parenting contract – if appropriate
- Completed Graduated Attendance Response – if appropriate

4.3 For requests regarding unauthorised leave of absence the following documentation needs to be submitted to fpn@york.gov.uk:

- Certificate of Attendance – Must be full sessions ie if the school finishes early on the last day of term then this can not be included
- Leave of Absence application form - if appropriate
- Letter of refusal to the parent - if appropriate
- Full names, address and contact details of the people to be issued with a penalty notice

In cases regarding unauthorised leave of absence documentation should be submitted preferably no more than three weeks following the taking of the unauthorised leave.

4.4 Penalty notices issued by City of York will only be issued by first class post, using City of York invoices, and never as an on the spot action. This is to ensure that the evidence to support the penalty notice is sound and meets Health and Safety requirements.

4.5 Requests will normally be responded to within 15 school days of receipt.

5. Procedure for withdrawing penalty notices

5.1 Once issued, a penalty notice may only be withdrawn in the following circumstances:

- it ought not to have been issued
- it ought not to have been issued to the person named as the recipient
- it contained material errors
- the use of the penalty notice does not conform to this code of conduct
- the period for payment has expired (and consideration will now be given to prosecution under section 444 (1) or section 444 (1A) of the act)

6. Payment of penalty notices

6.1 Arrangements for payment will be detailed on the penalty notice

6.2 Payment of a penalty notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the penalty notice.

6.3 Payment of a penalty notice within 21 days is £60 and payment after this time but within 28 days is £120.

6.4 Payment cannot be made by instalment.

6.5 The LA retains any revenue from penalty notices to cover enforcement costs (collection or prosecuting in the event of non-payment). Any surplus at the end of the year must be returned to the Secretary of State.

7. Non-payment of penalty notices

7.1 Non-payment of a penalty notice will result in the withdrawal of the notice and will trigger consideration of the prosecution process under the provisions of Sec 444, 1996 Education Act.

7.2 The decision to prosecute will be taken in line with the code for crown prosecutors and any City of York Enforcement Policy

The Code is issued by the Attorney General which states that the decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order and therefore careful consideration will be given before agreeing to institute court proceedings under Section 444 of the Education Act 1996

General Principles:

Each case is unique and must be considered on its own.

The right person is prosecuted for the right offence which underlines the importance of having up to date information on school records of all those with parental responsibility as well as day-to-day care and supervision. It is essential that schools regularly up-date their contact details.

There is sufficient evidence to provide a realistic prospect of conviction and consideration must be given to what the defence case may be and how that is likely to affect the prosecution case.

Is the evidence reliable? It is therefore essential that schools ensure that they are satisfied with the accuracy of the register and registration codes used.

There are also Public Interest factors against prosecution which must be considered:

- The offence was committed as a result of a genuine mistake or misunderstanding;
- A prosecution is likely to have a detrimental effect on the victim's physical or mental health;
- The defendant is suffering from mental or physical ill-health;
- It is considered that there is insufficient evidence to provide a realistic prospect of conviction;
- At the point of considering issuing a penalty notice the above principles should be taken into account. However, should these issues only come to the notice of the school or LA once the notice has been issued, a withdrawal will be considered in discussion with the school's Attendance Lead.

When a Notice is withdrawn, no proceedings under Section 444 of the Education Act 1996 shall be instituted against the recipient in respect of the period covered by the original Penalty Notice.

However the LA may decide to:

- offer the parent a formal caution
- a warning letter from the school attendance adviser
- a warning letter from legal services

8. Policy & publicity

8.1 The use of penalty notices as a sanction is included on the attendance page of City of York website:

<https://www.york.gov.uk/SchoolAttendance>.

8.2 School Attendance policies should include information on the deployment of penalty notices and this will be brought to the attention of all parents.

A clear procedure for requesting Leave of Absence and the school response to unauthorised absence should be available to parents and mentioned in relevant policies and on the school website.

Other measures to ensure parents are fully aware of the potential consequences of pupils with leave of absence and unauthorised absence which is not authorised by the headteacher may include:

- Parents being written to annually to inform them of the schools position regarding leave of absence in term time and unauthorised absence. Such letters need to be sent to all parents with consideration to a copy being placed in each pupils file. This is particularly important as it may be part of any evidence presented to court should any enforcement action need taking in the event of a penalty notice not being paid
- the handbook and school website for parents contains information about the school's position and views on leave of absence in term time and unauthorised absence

8.3 The LA will include information on the use of penalty notices and other attendance enforcement sanctions in promotional/ public information material.

9. Reporting & review

9.1 The School Attendance Adviser will report at regular intervals to the Assistant Director (Education and Skills) on the deployment and outcomes of penalty notices.

9.2 This code of conduct will be reviewed annually. Amendments to this code will be made in line with any legislative changes. This may require further consultation as appropriate

9.3 Head teachers should report to the governors on an annual basis giving details of the penalty notices issued on parents of pupils within their school.