

NORTH YORKSHIRE LOCAL AUTHORITY'S CODE OF CONDUCT FOR THE USE OF PENALTY NOTICES - UNAUTHORISED ABSENCE AND EXCLUSION

1. Legal Basis

Irregular Attendance

Under Section 23 of the Anti-Social Behaviour Act 2003, the Education Act 1996 was amended with the introduction of 2 new subsections under Section 444 (subsections 444A and 444B) which make it possible for Penalty Notices to be used as an alternative to prosecution in cases of unauthorised absence from school.

Exclusions

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 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 term or permanent exclusion. Section 105 allows for a Penalty Notice to be given to a parent guilty of an offence under Section 103 of the Act.

The issuing of **all** Penalty Notices must conform to the requirements of the Human Rights Act and all Equal Opportunities legislation.

2. Rationale

The Local Authority (LA) has the responsibility, as determined by the Department for Education (DfE) for developing the Code of Conduct within which all partners named in the Act will operate. This is a requirement of the Parental Responsibility Measures for School Attendance and Behaviour Statutory Guidance for Maintained Schools, Academies, Local Authorities and the Police (DfE November 2013).

Although the regulations make provision for a Head teacher (or other nominated school staff), the Police and the LA to issue Penalty Notices, it is a requirement of the LA's Code of Conduct for the use of Penalty Notices that procedures are consistently applied and enforcement action is not duplicated. In order to support compliance with this requirement, and that any subsequent court action can be integrated within existing arrangements, this protocol places the main responsibility for issuing Penalty Notices with North Yorkshire Local Authority. The Authority will administer the scheme for all schools in its area, including academies and free schools.

Parents and pupils are supported at school to overcome barriers to regular attendance and through a wide continuum of assessment and intervention strategies delivered by the LA's Prevention Service. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient and there is a reasonable expectation that parents are able to exercise their responsibility more effectively. Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that it will

secure an improvement.

3. Circumstances where a Penalty Notice may be issued

Irregular Attendance

A Penalty Notice for irregular attendance can only be issued in cases of **unauthorised** absence. No parent will receive more than two separate Penalty Notices resulting from the unauthorised absence of an individual child in any twelve-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.

There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible Penalty Notice if further unauthorised absence occurs within 15 days of the letter being sent.

The issuing of a Penalty Notice is considered appropriate in the following circumstances:

- Parentally-condoned absences including unacceptable reasons for absence (e.g. too tired after a late night, birthday treat)
- Leave of absence taken but not agreed as exceptional circumstances by the Head teacher when requested in advance e.g. for a family holiday
- Excessive delayed return from agreed leave of absence without prior school agreement (amounting to a minimum 10 unauthorised sessions)
- Persistent late arrival at school recorded as unauthorised absence (after the register has closed).

Exclusions - see Pt. 6

4. Procedure for issuing Penalty Notices for Irregular attendance *(excluding unauthorised leave of absence (holiday) in term time – (see Pt. 5)*

The LA will issue Penalty Notices to achieve consistent and equitable delivery and allow cohesion with other enforcement sanctions. Penalty Notices will only be issued by post. This is to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.

Penalty Notices will be issued if the following is in place:

- There has been a prior referral to the Prevention Service for support
- The formal School Attendance Procedure (fast track) has been implemented by the school
- All relevant information has been supplied to the LA in the specified manner
- A decision has been made to issue a Penalty Notice Warning letter from a PACE Formal Caution Interview/LA Panel Meeting

- Ability to pay is set against improving attendance by the issuing a Penalty Notice (PN's, unlike a prosecution, are not means tested - this to include any cases of possible multiple issue to any one family)
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being progressed
- The circumstances of the pupil's absence meets all the requirements of this Code of Conduct

Documents required (to be used in the event of non-payment of the fine):

Certificate of Absence – completed and signed by the Head teacher evidencing the unauthorised absence.

Witness Statement - supporting written evidence completed and signed by the Head Teacher/school practitioner including evidence that the school has supported the family to improve their child's attendance, e.g. home visits, meetings in school, formal School Attendance Procedures (fast track) implemented and referral to the Prevention Service and/or other agencies.

Documentation should provide evidence that the parent has not engaged with the support offered and has continued to fail to exercise their legal responsibility to ensure their child's regular and punctual attendance at their educational placement. *(This will support a prosecution under the Education Act 1996 s444 (1) should the fine not be paid).*

Where the criteria is met and it is established that an offence under Section 444 (1) Education Act 1996 has been committed the LA will:

- Issue a formal written warning to the parent/carer of the possibility of a
 - Penalty Notice being issued
- In the same letter set a period of 15 school days commencing 3 school days following dispatch of the Warning Letter within which the pupil must have no unauthorised absence *(to be sent by 1st Class Post)*
- Issue a Penalty Notice through the post at the end of the 15 day period if there has been further unauthorised absence recorded
- Progress a prosecution through the Magistrates Courts for the offence of failing to ensure the child's regular attendance if the PN remains unpaid. *(Not regarding the non-payment of the fine although this will be used in evidence)*

N.B. If a not guilty plea is entered by the parent then the initial hearing would be adjourned to prepare for trial when the Head teacher and or practitioner (s) may be summoned to give evidence regarding the unauthorised absence.

5. Procedure for Issuing Penalty Notices for unauthorised leave of absence taken in term time

Amendments to the Education (Pupil Registration) (England) Regulations 2006 removed references to 'family holiday' and 'extended leave' as well as the statutory threshold of 'ten school days'. The amendments make clear that head teachers may

not grant any leave of absence during term time unless there are exceptional circumstances (*requests for holidays in term time would not normally meet the criteria*).

The issuing of a Penalty Notice applies only to the deliberate taking of leave of absence in term time, where 1) the Head teacher has deemed on application that the reason given did not meet the criteria for exceptional circumstances and 2) where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given.

If parents have not applied in advance then, by default the absence is not agreed, as leave of absence cannot be approved retrospectively. This must have created a period of unauthorised absence in the last 4 months of at least 10 sessions (or 5 school days). The absence can be in one block or accumulated over the 4 month period.

If the leave of absence is agreed, the Head teacher should determine the number of school days a child can be away from school. Any leave taken in excess of this period is deemed in itself to be unauthorised absence and can be liable to a Penalty Notice being issued if the excess absence amounts to 10 sessions or more.

The Head teacher should contact the LA to issue a Penalty Notice sending all relevant documentation no more than two weeks following the taking of the unauthorised leave. The following documentation needs to be submitted:

- **Certificate of Absence (Unauthorised Leave)** - for the period in question completed and signed by the Head teacher
- **Certificate of Registration (electronic) for a minimum of the previous six months attendance prior to the leave** (this may straddle two academic years)
- **Witness Statement** - completed and signed by the Head teacher
- **Leave of Absence Application Form and reply to the parent** (if available)

Where a parent fails to pay a Penalty Notice issued in these circumstances, the LA will pursue a prosecution of the parent under the Education Act 1996 s444 (1) and will present the case in court. The evidence provided by the Head teacher will be laid before the magistrates regarding the unauthorised absences.

6. Procedure for Issuing Penalty Notices for exclusion (fixed term or permanent)

A parent/carer 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.

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 needs 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

7. Procedure for withdrawing Penalty Notices

Once issued, a Penalty Notice will be withdrawn only in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person
- The use of the Penalty Notice did not conform to the terms of this Code of Conduct for the use of Penalty Notices

8. Payment of Penalty Notices

Penalty Notices are issued per child per family. Arrangements for payment will be detailed on the Penalty Notice. Payment of a Penalty Notice discharges the parent's liability for the period in question and he/she cannot subsequently be prosecuted for the period covered by the Penalty Notice.

Payment of a Penalty Notice within 21 days is £60 and payment after 21 days but within 28 days is £120. Part payments will not be accepted. A letter will be sent to the parent/carer(s) when the LA intends to pursue legal action following non-payment of the fine within the required time scale.

The LA retains any revenue from Penalty Notices to cover enforcement costs i.e. administration, collection or prosecution in the event of non-payment.

9. Non-payment of Penalty Notices

Non-payment of a Penalty Notice will trigger the prosecution process under the provisions of the Education Act 1996 s444 (1).

10. Policy and Publicity

The utilisation of Penalty Notices as a sanction will be included the LA's School Attendance - Advice and Requirements of all schools for consideration of Legal Enforcement by the Local Authority. All School Attendance Policies will need to include information on the utilisation of Penalty Notices and this will be brought to the attention of all parent/carer(s).

11. Reporting and Review

The LA will review the use of Penalty Notices at regular intervals. An annual monitoring report will be made to the Executive Members.

Contacts:

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All documentation for Penalty Notices regarding Holiday in Term Time should be forwarded by e-mail to safeguardingunit@northyorks.gov.uk or by post to Rm SB114, Safeguarding Unit, County Hall, Racecourse Lane, Northallerton, DL7 8AD

For all other advice please contact your local Area Prevention Manager from the Prevention Service

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