

SOMERSET COUNTY COUNCIL

PENALTY NOTICE – CODE OF CONDUCT



(The term “school” will include, state schools, academies and alternative provision)

1. LEGISLATION

- 1.1 The Education (Penalty Notice) (England) Regulations 2007 supports offences under section 444 of the Education Act 1996. This Code of Conduct complies with these statutory Instruments.
- 1.2 The Anti Social Behaviour Act 2003, Section 23, introduced section 444A and 444B into section 444 of the Education Act 1996. This enables Penalty Notices to be issued as an alternative to prosecution in the Magistrates Court under section 444 Education Act 1996. By paying the penalty the parent discharges their liability for possible conviction of that offence.
- 1.3 The education provisions of the Anti Social Behaviour Act 2003 apply to parents defined Section 576 of the Education Act 1996: ‘all natural parents, whether they are married or not; any person who has parental responsibility for a child; and any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent in education law’.
- 1.4 Penalty Notices supplement existing sanctions available under Section 444 Education Act 1996 or Section 36 the Children Act 1989 to enforce attendance at school or alternative provision. There is no legal requirement to consider a Penalty Notice before proceeding to a section 444 prosecution – Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices DfE (DCSF) 2007.
- 1.5 Education & Inspections Act 2006 allows a Penalty Notice to be issued if an excluded child is found in a public place, during the first 5 days of exclusion.
- 1.6 This Code of Conduct complies with the requirements set out in Sections 14-16 of The Education (Penalty Notices) (England) Regulations 2007.
- 1.7 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998, Disability Discrimination Act 1995 and Sex Discrimination Act 1975 and the Equality Act 2006.
- 1.8 The Education (Penalty Notices) (England) (Amendment) Regulations 2013 (Statutory Instrument No 757) explains a Penalty Notice is £60 if paid within 21 days and £120 if paid on 22nd day but within 28 days.

2. Rationale

- 2.1 This Code of Conduct ensures that Penalty Notices are administered consistently and fairly across the Local Authority.
- 2.2 Regular and punctual attendance at school is both a legal requirement and essential for children and young people to maximise their educational opportunities. An offence occurs:

- 2.2.1 If a parent 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, or
- 2.2.2 An excluded child is found in a public place, without their parent, during the first 5 days of a formal exclusion from school, during the usual school day.
- 2.3 Sanctions are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure improvement. Sanctions of any nature will only be used where parental co-operation is either absent or deemed insufficient to resolve an attendance problem.
- 2.4 Penalty Notices are an available sanction for a local authority as an alternative to prosecutions under section 444 of the Education Act 1996 and enable parents to discharge potential liability to a formal prosecution.

3. Authorisation

- 3.1 Penalty Notices are issued by the Local Authority. The Education Welfare Service (EWS) will manage this to ensure consistency and prevent conflict with other enforcement sanctions for poor school attendance.
- 3.2 Legislation allows Headteachers & the Police to issue Penalty Notices. However, by agreement only the Local Authority will issue Penalty Notices in Somerset. If a Headteacher or Police Officer feels it is appropriate for a Penalty Notice to be issued they must consult with the EWS

4. Use of Penalty Notices

Penalty Notice Code of Conduct is considered in the following circumstances:

- 4.1 There have been at least 10 sessions of unauthorised absence in the last 12 school weeks and the school, in consultation with the EWS, believe this early intervention will resolve the poor attendance and stop the matter moving toward a prosecution under section 444 of the Education Act 1996.
- 4.2 If a Headteacher does not authorise a request for term time leave and the parent takes the leave, there must be at least 10 continuous sessions of unauthorised term time leave taken.
- 4.3 An excluded pupil is found in a public place, without their parent, during the school day. (A school is not deemed a public place for this legislation.)
- 4.4 Penalty Notices should not be issued for children in care. Any attendance concerns will form part of their PEP.

5. Procedure for Issuing Penalty Notices

- 5.1 The Local Authority will consider a Penalty Notice providing:
 - 5.1.1 All relevant information is supplied in the specified manner.
 - 5.1.2 The pupil's absence meets the terms of the Code of Conduct.
 - 5.1.3 Issuing a Penalty Notice does not conflict with other interventions or statutory work.

- 5.2 A school must clarify to its parents, by newsletter or reference to the attendance policy, the importance of full school attendance and that it will seek the use of statutory duties when required by liaison with the local authority.
- 5.3 Schools must record how they have tried to engage parents to bring about change in their child's poor school attendance or taking of term time leave.
- 5.4 All requests to consider a Penalty Notice will be considered by the EWS.

Unauthorised Absence

- 5.5 Penalty Notices are expected to be an early intervention tool. Therefore, if unauthorised absences are greater than 30 in the preceding 12 weeks the EWS may not to follow the Penalty Notice route and request the matter be dealt with by case work route.
- 5.6 If there are at least 10 sessions of unauthorised absence, as described in 4.1 above, the school may complete a request for a Penalty Notice to be considered (**Appendix A**) and forwarded to the EAS. A warning letter will be sent to each parent requiring they ensure their child attend school over a 15 day school period, where there should be no unauthorised absences. If there are unauthorised absences during this period a Penalty Notice may be issued to each parent
- 5.7 If the 15 day monitoring period is passed each parent will receive a letter explaining that a Penalty Notice will not be issued on this occasion. The letter will also state that the good attendance must continue and if there are further unauthorised absences within 3 months, following the end of the 15 days monitoring period, a Penalty Notice may still be issued or legal action considered under section 444 Education Act 1996.

Unauthorised Term Time Leave

- 5.8 Any parent who takes their child out of school for term time leave of 10 continuous sessions, not authorised by the school, may receive a Penalty Notice. The school must complete a request for a Penalty Notice (**Appendix A**), specifically requesting this action. Head teachers must be aware that if solely requested for unauthorised term time leave and the Penalty Notice not paid, they will be required to explain to court their reasons for not authorising the leave in any legal action.

Found in a Public Place during First Five Days Following Exclusion

- 5.9 If an excluded child is found in a public place, during school hours without their parent, then formal notification must be made by the appropriate school staff, Police or local authority officer (**Appendix B**). Parents will be advised by letter.

NB: Somerset will not usually issue more than one penalty notice per child, per parent in one academic year. If poor attendance continues, the EWS will consider other legal interventions.

6. PROCEDURE FOR WITHDRAWING A PENALTY NOTICE

The Education (Penalty Notices) (England) Regulations 2007 sets out the circumstances in which a penalty notice issued can be withdrawn. The grounds for withdrawing a penalty notice are:

- Penalty Notice has been issued outside of the terms of the local code of conduct;
- It ought not to have been issued or issued to the person named as the recipient;
- Penalty Notice contains material errors; or
- where after the expiry of 28 days the penalty notice is unpaid and the LA has not started legal proceedings or wishes to take such action under section 444.

Please be aware that once a penalty notice is issued it can only be withdrawn because of one of the reasons listed above. LAs should not issue penalty notices unless they are willing to prosecute parents for the original offence of failing to secure their child's regular school attendance following non-payment.

Formal withdrawal will be by letter.

7. PAYMENT OF PENALTY NOTICES

- 7.1 Penalty Notices will only be issued by post and not as 'on the spot' action. This will ensure all evidential requirements are in place and safeguard officers.
- 7.2 The arrangements for paying the Penalty Notices will be detailed on the Notice.
- 7.3 Penalty Notices must be paid in full. **Instalment payment is not acceptable.**
- 7.4 Payment is acknowledged by letter.

8. NON-PAYMENT OF PENALTY NOTICES

- 8.1 The penalty is £60 if paid within 21 days of receipt of the Penalty Notice (assumed as 2 working days following the Notice being sent by first class mail), or £120 if paid after 21 days but within 28 days of receipt of the Notice.
- 8.2 If the Penalty Notice is not paid in full by the end of the 28 day period, the local authority must either prosecute for the offence to which the notice applies or withdraw the Notice (see section 6). This will be done by letter.
- 8.3 The prosecution is not for non-payment of the Penalty Notice but is a prosecution for irregular school attendance under Section 444 of the Education Act 1996.
- 8.4 There is no statutory right of appeal against the issuing of a Penalty Notice.
- 8.5 Under this Code of Conduct all "revenue" from Penalty Notices will be collected by the local authority to help administer the process. The Local Authority will then report to schools and the Police as required.



EDUCATION WELFARE SERVICE – REQUEST FOR INVOLVEMENT

From School/Academy

1. Request for Education Welfare Involvement- Investigation/ Prosecution

(All material relating to the management of absence in School/Academy needs to be sent with this application)

2. Request for Penalty Notice application following:

• **Term time leave 10 consecutive sessions of unauthorised absence G code**

• **10 or more unauthorised sessions (in a period of no more than 12 school weeks)**

(This will result in a warning period being given before a Penalty Notice is issued)

NB: The Penalty Notice or Request for Involvement process will only be considered if a pupil has at least 10 sessions of unauthorised absence within the previous 12 school weeks.

I certify that date of birth
 year group is a registered pupil of compulsory school age, on roll at this school/academy.
 He/she had sessions of unauthorised absences between the dates below
 and

To the best of my knowledge, the person/s with parental responsibility for this pupil is/are:

Title (Mr/Mrs) First Name Surname
 Relationship to student Father / Mother / Carer / other (please specify)
 Address
 Post Code
 Tel No
 Is parent/carer aware of request for Penalty Notice / EWO involvement? Yes No

To the best of my knowledge, the person/s with parental responsibility for this pupil is/are:

Title (Mr/Mrs) First Name Surname
 Relationship to student Father / Mother / Carer / other (please specify)
 Address
 Post Code
 Tel No
 Is parent/carer aware of request for Penalty Notice / EWS involvement? Yes No

EHA completed? Yes Not offered Refused
SENCO Involvement? Yes No

Declaration:

I hereby certify that the information given in this form is true to the best of my knowledge. The information has been extracted from the school's current records – **copy of register attached.**

Signature _____ Name (printed) _____

Position _____ Date _____

This form will be used in legal action relating to non-school attendance (unauthorised absence) of a registered pupil at the school. The Headteacher or a representative should send the completed form to ewsrequests@somerset.gov.uk

Please refer to the Penalty Notice Code of Conduct for full details.

APPENDIX B

WWW.SOMERSET.GOV.UK



EDUCATION WELFARE SERVICE

(Request for Penalty Notice, Section 105 of The Education and Inspections Act 2006 – an excluded pupil is found in a public place during first 5 days of a formal exclusion)

I certify that [] (pupil) date of birth [] is a registered pupil of compulsory school age at [] School/Academy. This pupil was formally excluded from the school on (date) []

The parent/carer was notified of their duty (section 103 of the Education and Inspections Act 2006) at the time of the exclusion, verbally on (date) [] and by letter (copy attached).

Pupil's name [] was found in a public place (at/in venue/road) [] at (time) [] on (date) [] by (name) [] who is (LA employee / Police Officer / school staff) and is willing to give their evidence should the need arise. This is within the first five days of the formal exclusion and deemed to be a public place.

The school's records show the parents/carers to be:

First Name [] Surname []
Father / Mother / Carer / other (please specify)

Address and Post Code []
Tel No []

First Name [] Surname []
Father / Mother / Carer / other (please specify)

Address and Post Code []
Tel No []

Declaration:

I hereby certify that the information given in this form is true to the best of my knowledge.

Signature _____ Name (printed) _____

Position _____ Date _____

Please send this form fully completed to ewsrequests@somerset.gov.uk.