



PENALTY NOTICE CODE OF CONDUCT

SEPTEMBER 2018

SCHOOL ATTENDANCE

1. LEGAL BASIS

Section 444A and 444B of the Education Act 1996 introduced Penalty Notices as an alternative to prosecution under section 444 of the Act. Parents may discharge potential liability for conviction for an offence under section 444 by paying a penalty. There is no legal obligation to issue a Penalty Notice before proceeding to prosecution.

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 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. These days of exclusion are known as "specified days of exclusion" and will be detailed in a notice given to the parent under section 104 of the 2006 Act. This notice will be combined with the notice the school must issue when a child is excluded. The parent is responsible for the child during the specified days upon receipt of the notice. Section 105 of the 2006 Act allows for a Penalty Notice to be given to a parent guilty of an offence under section 103. The school must have notified the parent at the time of the exclusion of their duty and the days to which it relates.

The term "parent" is defined in section 576 of the Education Act 1996 as including any person who, although not his parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; or any person who, although not his parent, has care of a child or young person. Throughout this document references to 'parent' mean each and every parent falling within this definition (whether acting jointly or separately).

2. SCHOOL ATTENDANCE LEGISLATION

Under section 7 of the Education Act 1996, parents are responsible for making sure that their children of compulsory school age receive efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. This can either be regular attendance at school or by education otherwise. Compulsory school age begins from the start of the term immediately following the child's fifth birthday and continues until the last Friday of June in the school year that they reach the age of sixteen.

If a child of compulsory school age fails to attend regularly at a school at which they are registered or at alternative provision made for them then the parent may be guilty of an offence under section 444 of the Education Act 1996.

Under section 447 of the Education Act 1996 a Local Authority must consider applying for an Education Supervision Order (ESO) under section 36 of the Children Act 1989 before prosecuting a parent under section 444 of the 1996 Act. A Local Authority may apply for an ESO instead of or as well as prosecuting the parent.

3. CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

Parents and pupils are supported at school and by Local Authority Officers to overcome issues that prevent regular school attendance through a wide range of intervention strategies. Where this intervention fails, Penalty Notices are an appropriate intervention to get pupils back into school or alternative education. They are also an appropriate sanction for a parent who has failed to ensure their child is not found in a public place while excluded; and, where a parent is judged capable of securing their child's attendance but is not willing to take responsibility for doing so.

A Penalty Notice can only be issued in cases of unauthorised absence. Use of Penalty Notices will be restricted to two per pupil per academic year. In situations where a parent meets the criteria for more than one Penalty Notice to be issued, because there is more than one child with irregular school attendance, more than one Penalty Notice may be issued.

Circumstances in which a Penalty Notice might be issued are:

- Irregular school attendance, following a Penalty Notice Warning;
- Overt truancy (including pupils found during truancy sweeps);
- Parentally-condoned absences;
- Being in a public place during the first five days of an exclusion;
- Unauthorised holidays during term-time; and
- Persistent late arrival at school (after the register has closed).

To ensure consistent service of Penalty Notices, they will only be issued where the following criteria apply:

- Where there are any sessions (a session being a half day) recorded as unauthorised holiday absence; or
- Where a child who has been excluded is found to be present in a public place during the first five days of the exclusion; or
- Where a parent has been issued with a formal warning of the possibility of a Penalty Notice being issued and given a 15 day period in which to improve attendance and there are any sessions (a session being a half day) recorded as unauthorised absence during that 15 day period.

4. PENALTY NOTICE WARNINGS

Where there are at least 10 sessions recorded as unauthorised absence (with the exception of unauthorised holiday absence where different rules apply) during any six week period, a warning will be served on the parent(s) giving them a 15 school day period in which to effect an improvement in their child's attendance. If there are any sessions missed within that 15 school day period, as a result of unauthorised absence, a Penalty Notice will be issued.

Where there are any sessions recorded as unauthorised holiday absence, a warning will not be served on the parent(s) and Penalty Notices can be issued immediately.

5. HOLIDAYS DURING TERM-TIME

For clarification, in accordance with regulation 7 of the Education (Pupil Registration) (England) Regulations 2006 as amended by the Education (Pupil Registration) (England) (Amendment) Regulations 2013, parents do not have an entitlement to take their children out of school for the purpose of a family holiday during term-time. A leave of absence may only be granted if an application has been made in advance to the school and the school consider that the leave of absence should be granted due to the exceptional circumstances relating to the application.

It is expected that schools will remind parents on a termly basis of the legal position with regard to holidays taken during term-time and that schools' policies and paperwork will reflect this position.

6. PROCEDURE FOR ISSUING PENALTY NOTICES

Penalty Notices will only be issued within the terms of this Code of Conduct. The Local Authority will ensure that Penalty Notices are properly issued and only issued for offences where the Local Authority is willing and able to prosecute.

The Early Help Service is responsible for the issue of Penalty Notices in Darlington. This ensures consistent and equitable delivery, retains home-school relationships and allows cohesion with other enforcement sanctions.

Penalty Notices will only be issued by first class post and never as an "on the spot" action in order to ensure that all evidential and health and safety requirements are met.

The Early Help Service will accept requests to issue Penalty Notices from schools, Durham Constabulary and neighbouring Local Authorities. These requests will be actioned provided that:

- All relevant information is supplied in the specified manner;
- The circumstances of the pupil's absence meets all the requirements of this Code of Conduct; and
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

All Penalty Notices that are issued are recorded on a Tracking Database. All offences that proceed to prosecution, or where such proceedings are being contemplated, are also recorded on the Tracking Database. Before issuing a Penalty Notice, the Early Help Education Support Officer will check the Tracking Database to ensure that a notice has not already been issued for this offence to the parent(s); that prosecution proceedings have not already been commenced or are being contemplated for the offence; and that there hasn't already been two Penalty Notices issued in respect of that pupil during that academic year.

7. PROCEDURE FOR WITHDRAWING PENALTY NOTICES

The Local Authority may withdraw a Penalty Notice where:

- It ought not to have been issued i.e. where it has been issued outside of the terms of this Code of Conduct or where no offence has been committed; or
- It has been issued to the wrong person; or
- It contains material errors.

8. PAYMENT OF PENALTY NOTICES

Arrangements for payment will be detailed on the Penalty Notice. Payment of a Penalty Notice is £60 if paid within 21 days of receipt of the Notice, increasing to £120 if paid after 21 days but within 28 days of receipt. A Notice served by first class post is deemed to have been received on the second day after posting it.

Payment of a Penalty Notice discharges liability for prosecution for the offence to which the notice relates. Neither the fact that a Penalty Notice was issued and paid nor the pattern of unauthorised absence or presence in a public place of an excluded pupil to which a paid notice relates can be submitted as evidence in a prosecution for any subsequent truancy or excluded pupil offence.

The Local Authority retains any revenue from Penalty Notices to cover the costs of issuing or enforcing notices or the cost of prosecuting recipients of notices who do not pay.

9. RIGHT OF APPEAL

There is no statutory right of appeal against a Penalty Notice.

10. NON-PAYMENT OF PENALTY NOTICES

If the Penalty Notice is not paid in full by the end of the 28 day period the Local Authority must either prosecute under section 444 of the Education Act 1996 or withdraw the notice. Where a Penalty Notice is withdrawn the parent will be informed of this in writing.

11. POLICY AND PUBLICITY

The use of Penalty Notices is included in all schools' attendance policies and this will be brought to the attention of all parents.

The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional and public information material.

12. REPORTING AND REVIEW

The Early Help Service will maintain accurate records identifying the implementation of Penalty Notices and will report at regular intervals to head teachers, Police and Community Safety Partnerships on their use.

The Early Helpⁱ Service will review Penalty Notice intervention at regular intervals and make amendments as required. Local Authority reports on attendance matters will include Penalty Notice use.

13. CONTACTING THE EARLY HELP SERVICE

Tracey Doyle – Early Help Education Support Officer

e: tracey.doyle@darlington.gov.uk

tel: 01325 406354 or 406250

Brian Dean - Early Help Education Support Officer

e: brian.dean@darlington.gov.uk

tel: 01325 406235 or 406250

Lindsey Armstrong - Early Help Education Support Officer

e: lindsey.armstrong@darlington.gov.uk

tel: 01325 406356 or 406250

Deborah Archer – Team Leader

Early Help Service
McNay Street Children's Centre
2A McNay Street
Darlington
DL3 6SW

e: deborah.archer@darlington.gov.uk

tel: 01325 406245 or 406250

ⁱ PNC Early Intervention and First Contact – Legal – 27/7/17

Do you require Braille Large type and translations section please?

For further enquiries please contact:

Early Help Educational Support Officers
McNay Street Children's Centre
2A McNay Street
Darlington
DL3 6SW
Tel: 01325 406250.



BRAILLE
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**This document will be made available
on request to Children's Services in
whatever way people need.
Braille, large print and audio cassettes
are also available in other languages.
Telephone: 01325 406250**

Arabic

إذا رغبتكم الحصول على هذه النشرة بلغة أخرى غير اللغة الإنجليزية نرجو
الاتصال بنا على رقم الهاتف التالي 01325 406250 مع ذكر رقم الإشارة.

Bengali

যদি আপনার ইংরেজী ছাড়া অন্য কোন ভাষায় এই প্রকাশনাটির দরকার থাকে, তাহলে 01325 406250
নম্বরে ফোন করুন এবং সূত্র নম্বর উল্লেখ করুন।

Cantonese

如果你需要其它語言的版本，請與以下電話聯係並報出參考號碼：01325 406250

Hindi

यदि आप यह प्रकाशन अंग्रेजी के अलावा अन्य भाषा में चाहते हैं तो कृपया संदर्भ नम्बर (रेफरन्स नम्बर)
बताकर निम्नलिखित 01325 406250 पर संपर्क करें।

Punjabi

ਜੇ ਇਹ ਪਰਚਾ ਤੁਹਾਨੂੰ ਅੰਗਰੇਜ਼ੀ ਤੋਂ ਬਿਨਾਂ ਕਿਸੇ ਹੋਰ ਭਾਸ਼ਾ ਵਿਚ ਚਾਹੀਦਾ ਹੈ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ
ਸਾਨੂੰ ਨੰਬਰ 01325 406250 ਤੇ ਫੋਨ ਕਰੋ ਅਤੇ ਰੈਫਰੈਂਸ (ਹਵਾਲਾ) ਨੰਬਰ ਦੱਸੋ।

Urdu

اگر آپ کو یہ کتابچہ انگریزی کے علاوہ کسی دوسری زبان میں درکار ہو تو برائے مہربانی ٹیلیفون نمبر 01325 406250 پر فون کر کے حوالہ
نمبر بتائیں۔

Polish

Jeśli chciał(a)by Pan(i) otrzymać polską wersję językową tego dokumentu, proszę zadzwonić
pod numer 01325 406250 podać numer identyfikacyjny dokumentu.