



## Procedures for Issuing Education-related Penalty Notices

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## **Introduction**

This document sets out the principles which influence how and when education-related penalty notices will be used. It includes the codes of conduct in respect of notices for attendance and notices for the whereabouts of excluded pupils and also details the procedural arrangements for the administration of such notices. In addition, the detail of the legislation that underpins the issuing of education-related penalty notices can be found in Appendix 1.

The proportion of pupils achieving five GCSEs at grades A\* to Cs including English and maths is very low when the pupils' absence from school is high. 74 per cent of pupils with less than 4 per cent of overall absence in 2011/12 achieved 5 or more A\* to C grades at GCSE including English and maths. When pupils miss more than half of the Key Stage 4 period only 3 per cent of them achieve the same grades.

It is a similar story in primary schools. Of pupils with less than 4 per cent overall absence at Key Stage 2, six in seven achieved the minimum expected level in both English and maths, and just over a third of pupils achieved the higher level (level 5) in both English and maths.

As overall absences increase, the likelihood of pupils achieving the expected level decreases. Of pupils with overall absences between 20 and 30 per cent, around a half achieved level 4 or above in both English and maths and less than 7 per cent achieved level 5.

## **Rationale – penalty notices for non-attendance**

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their education opportunities.

Legal action in the courts may be used as a strategy to improve attendance when parents/carers have failed to secure their children's regular attendance at school or other alternative provision. Penalty notices are simply another enforcement option that is now available to the local authority.

However, it should be noted that 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.

Furthermore, all parties involved must act within the parameters of the local code of conduct.

## **Rationale – penalty notices for whereabouts of excluded pupils**

Parents/carers are expected to make arrangements for the supervision of children who have been excluded from school on any day in the first five school days to which any exclusion relates.

Where the local authority is notified that a parent/carer is believed to be failing in their statutory duty to ensure such children are not in a public place, an investigation will be

undertaken to establish the basic facts of the case in each instance in order to determine whether an offence is likely to have been committed.

It is expected that in the first instance parents would be reminded of their duty under this legislation and warned as to future behaviour, but subsequently a penalty notice could be issued where the criteria set out in the relevant code of conduct have been met. However, where a child is reported on more than one occasion during any single episode of exclusion, Sefton Council will only consider a penalty notice for any one offence.

### **Administration of education-related penalty notices**

#### **Payment of penalty**

Arrangements for payment will be detailed on the penalty notice proforma.

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

Payment of a penalty within 21 days of receipt of the notice is £60. Payment after this time, but within 28 days of receipt of the notice is £120 [The Education [Penalty Notices] (England) (Amendment) Regulations 2013]

Sefton Council will retain any revenue from the income generated by education-related penalty notices to help cover the administration costs.

#### **Non payment of penalty**

Non payment of the penalty within the 28 day time limit will trigger the prosecution process under the provisions of Section 444 of the 1996 Education Act or Section 103 of the 2006 Education Act, except where the notice is withdrawn (as detailed in the criteria below). However, as with all prosecutions the rules of evidence and criminal procedural rules apply, and so the local authority must be satisfied that any prosecution meets the “evidential” test and the “public interest” test, otherwise a prosecution may not proceed.

#### **Procedure for withdrawing penalty notices**

Once issued, a penalty notice may be withdrawn where the local authority agree that:

- The penalty notice should not have been issued; or
- the penalty notice is shown to have been issued to the wrong person; or
- it appears to the local authority that the notice contains material errors

Where a notice is withdrawn under the first two of the above criteria, the requirements of regulation 8 (3) of the regulations 2007 will be satisfied by the local authority. (The Education (Penalty Notices) (England) Regulations 2007)

If a local authority ultimately decides not to bring proceedings in respect of the non-payment of a penalty notice, the notice must be formally withdrawn.

## **Reporting and review**

The local authority will review the penalty notice procedures at appropriate intervals and:

- Provide an annual report for council members, headteachers and the police.
- Ensure that all relevant statistical information is made available to the DfE.
- Propose amendments to the procedures as and when appropriate.

## **Code of Conduct for penalty notices for non-attendance**

### **Circumstances where a penalty notice may be issued for non-attendance**

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the Attendance and Welfare Service

A penalty notice for non-attendance can only be issued in cases of **unauthorised** absence. Any schools submitting requests must adhere to the guidance on the marking of registers. This guidance can be found in the Department for Education (DFE) document entitled “Absence and Attendance Codes – Guidance for Schools and Local Authorities”

The circumstances in which a penalty notice for non-attendance may be issued include:

- Parentally condoned absence
- Unauthorised leave of absence during term time unless there are exceptional circumstances
- Unwarranted delayed return from leave of absence (without school agreement)
- Persistent late arrival after the register has closed
- Part of the legal process between the school and local authority (i.e. at Attendance Panel Reviews).
- Truancy, including attendance and exclusion sweeps (formerly truancy sweeps).

A minimum evidential requirement of ten (10) school sessions lost to unauthorised absence by any pupil in the current term **and/or** eighteen (18) sessions lost to unauthorised absence over two consecutive terms will be required to trigger the process.

The number of penalty notices for non-attendance which can be issued is restricted up to a maximum of 2 per pupil, per parent/carer, in any one school year. There is no restriction on the number of times a formal warning may be given about the possible issue of a penalty notice.

The Attendance and Welfare Service will only be responsible for considering the issuing of penalty notices for children who are on the roll of a school or a pupil referral unit within Sefton. Neighbouring local authorities will decide on the appropriate action to be taken for children resident in Sefton but who attend out of borough schools. However, in such circumstances, cross-border discussions will take place between the relevant local authorities.

## **Procedure for issuing penalty notices for non-attendance**

The Manager of the Attendance and Welfare Service will issue penalty notices for non-attendance on behalf of Sefton Council. This will help ensure consistent and equitable delivery, maintain home/school relationships and complement other enforcement measures.

Penalty notices will be issued by first class post.

Requests from schools and the police to issue penalty notices will be considered by the Attendance and Welfare Service provided that:

- All relevant information is supplied in the specified manner.
- The circumstances of the pupil's absence meet all the evidential requirements of the code of conduct.
- Family circumstances are measured against the likelihood of securing improved attendance through the issuing of a penalty notice.
- The issuing of a penalty notice will not conflict with other intervention strategies already in place or other enforcement measures already being processed.

The Managers of the Attendance and Welfare Service will respond to all such requests within 5 school days, providing all criteria are met. They will then:

### **EITHER**

- 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 within which the pupil must have no unauthorised absence.
- Issue a penalty notice through the post at the end of the 15 day period if the required level of improvement has not been achieved.

### **OR**

- Investigate other interventions that may be more appropriate.

Where a penalty notice is requested for any leave of absence during term time, the Manager from the Attendance and Welfare Service will usually issue a warning letter relating to the period of the planned leave of absence, but reserves the right to issue a penalty notice without a warning letter where such leave of absence is either not requested by parents in advance, or requested with insufficient notice for a warning letter to be sent, or if a Headteacher has already formally warned the parents/carers that he/she will request the local authority to issue them with a penalty notice because:

- They have withdrawn their child(ren) for leave of absence without securing prior approval from the Headteacher, i.e. there are no agreed exceptional circumstances.

## **Code of Conduct for penalty notices for the whereabouts of excluded pupils**

### **Circumstances where a penalty notice may be issued for the whereabouts of excluded pupils.**

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the Attendance and Welfare Service.

A penalty notice for the whereabouts of excluded pupils can only be issued in cases where the parents of a formally excluded child fail in their duty to ensure that he/she is not in a public place during school hours (without reasonable justification) on a day which is one of the first five school days of any fixed period or permanent exclusion.

The notice allows a parent/carer to pay a penalty as a way of discharging any liability for the offence on the days specified. However, the parents/carers must have been explicitly notified by the school of this duty/liability at the time of their child's exclusion and the specific days to which it relates.

Consequently, schools will be required to provide the Attendance and Welfare Service with proof of notification and the means of delivery when making a request for a parent/carer to be issued with a penalty notice for the whereabouts of an excluded pupil.

However, a parent has a defence if they can prove reasonable justification. A competent justification which is capable of being regarded as reasonable will depend on the parents "facts" being backed up by proof. It is unlikely that any justification will be held to be reasonable unless it stands up on these facts.

The maximum number of penalty notices for the whereabouts of an excluded pupil that can be issued is restricted to 1 per pupil, per parent/carer **in any one exclusion period**, up to a maximum of five in any one school year.

There is no restriction on the number of times a formal warning may be given about the possible issue of a penalty notice.

The local authority will only be responsible for considering the issuing of penalty notices for children who are on the roll of a school or pupil referral unit within Sefton. Neighbouring local authorities will decide on the appropriate action to be taken for children resident in Sefton but who attend out of borough/schools. However, in such circumstances, cross-border discussions will take place between the relevant local authorities.

### **Procedure for issuing a penalty notice for the whereabouts of excluded pupils**

The Managers of the Attendance and Welfare Service will issue penalty notices for the whereabouts of excluded pupils on behalf of the local authority in Sefton and will automatically consider their use in all cases brought to his/her attention.

There are provisions in the legislation to enable the following to issue penalty notices, though there is no requirement to do so.



- Authorised local authority staff.
- Headteachers and where authorised, deputy and assistant heads.
- The police, community support officers and accredited persons.

Although Headteachers are empowered to issue penalty notices, the offence under Section 103 of the Education and Inspections 2006 Act allows an excluded pupil's presence in a public place where there is reasonable justification for them being there. As such, each individual case must obviously be looked at on its own merit.

Consequently, schools should report suspected breaches of Section 103 to the Managers of the Attendance and Welfare Service so that the facts of the case can be appropriately investigated before a penalty notice is ever issued.

As part of the investigation, the Managers of the Attendance and Welfare Service will consider circumstances such as the proper notification to parents, the number of times an excluded pupil has been apprehended, the parents/carers' actions or inactions that resulted in the excluded pupil being in a public place when they shouldn't have been there, the justification (if any) put forward by the parents/carers and their overall attitude towards their responsibilities.

Some sets of circumstances will be more straight forward than others. Parents/carers who claim to be unable to control their child or to be physically intimidated by them will need to prove this to be the case, unless it is self-evident. Although it is unlikely that such a justification would be held to be reasonable, it could still count towards mitigation. In such cases, where there is not already a Common Assessment Framework (CAF) process in place, schools will be advised to consider whether it would be appropriate to initiate the CAF process.

Penalty notices for parental responsibility will only be issued by first class post (which constitutes good service) and never hand delivered. This will ensure that evidential requirements are in place and meets health and safety requirements by avoiding potential face-to-face confrontation.

**Updated 20<sup>th</sup> March 2015**

### **Appendix 1 – Legislation**

In this document "Procedures for Issuing education-related Penalty Notices" : the 1996 Act means The Education Act 1996; the 2006 Act means The Education & Inspections Act 2006; the Regulations 2006 means The Education (Pupil Registration)(England) Regulations 2006 as amended by The Education (Pupil Registration)(England) Regulations 2013 and the Regulations 2007 means The Education (Penalty Notices ) (England) Regulations 2007 as amended by **The Education (Penalty Notices) (England) (Amendment) Regulations 2013.**

#### **Relevant Sections include:**

Regulation 7 of the 2006 Regulations which removes references to family holiday and extended leave as well as the statutory threshold of ten school days. The amendments



make clear that headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. Headteachers should determine the number of school days a child can be away from school if the leave is granted.

### **Children Act 1989**

The definition of “parent” means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility and/or care for a child or young person.

### **The Education Act 1996**

Section 7	Duty of parents to secure education of children of compulsory school age.
Section 8	Definition of compulsory school age.
Section 444	Offence: Failure to secure regular attendance at school of registered pupil.
Section 444A	Penalty notice in respect of failure to secure regular attendance at school of registered pupil.
Section 444B	Penalty notices: supplemental.
Section 444ZA	Application of section 444 to alternative educational provision.
Section 576	Definition or meaning of “parent”.

### **Education & Inspections Act 2006**

Section 103	Duty of parent in relation to excluded pupil.
Section 104	Notice to parent relating to excluded pupil.
Section 105	Penalty notice in respect of presence of excluded pupil in public place.
Section 106	Penalty notices: supplemental.

### **Additional Interpretations**

“School hours” mean a school session or a break between sessions on the same school day.

“A public place” means any highway or any place to which the public have access, and a school is not a public place for this purpose.

“Specific days of exclusion” are the days when this duty on parents/carers applies, and will be detailed in the notice given to the parent/carer under Section 104 of the 2006 Act. The parent/carer is responsible for the child during the specified days upon receipt of such notice.

\*The expression “parent”, in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has the day to day care of the child.

“Parent” – References to “parent” means each and every parent coming within the definition of the Children Act 1989, whether acting jointly or separately, and should not be taken to mean that the provisions only apply to a “parent” in the singular.

“Which constitutes good service” is a legal definition prescribing the approved conditions for effectively issuing formal notices under this scheme.

## Appendix 2

### Request for Penalty Notice Section 444a, Education Act 1996

This form is to be completed by the Headteacher. Information contained in the form will be used in legal action under the above Act relating to non-attendance at school in the event that an education penalty notice is issued and remains unpaid.

I am writing to request that the local authority consider issuing a penalty notice to the parent(s)\* of the following pupil.

**Name of Pupil:** ..... **D.o.B:** .....

**School/Academy:** ..... **Year group:** .....

**Address:** .....

..... **Post Code :** .....

#### Parent 1

**Full Name :** ..... **D.o.B :** .....

**Address:** .....

..... **Post Code:** .....

#### Parent 2

**Full Name:** ..... **D.o.B:** .....

**Address:** .....

..... **Post Code:** .....

I can confirm that all our attendance registers are marked in respect of authorised or unauthorised absence in accordance with the guidance issued by the Department for Education.

In making this request, I confirm that such action would not conflict with other intervention strategies already in place or other enforcement measures already being processed. I can also confirm that the governing body of this school has reviewed its attendance policy and agreed that this school will request the local authority to issue penalty notices in appropriate cases.

I attach a certificate of attendance and declaration regarding the evidence contained therein for use in the issue of an education penalty notice and where necessary, in any legal action taken under Section 444 of the Education Act 1996.

**Dated this:** ..... **day of :**..... 20.....

**Signature:** .....

**Name (please print):** .....

Please send this form fully completed to the Manager of the Attendance and Welfare Service.

\*The expression "parent", in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has day to day care of the child.

**Appendix 3**

**Request for issuing Penalty Notice  
Unapproved leave of absence during term-time  
Section 444a – Education Act 1996**

**This form is to be completed by the Headteacher.**

I am writing to request that the local authority consider issuing a fixed penalty notice to the parent(s) of the following pupil:

**Name of pupil:** ..... **D.o.B:** .....

**School/College:**..... **Year group:**.....

Address: .....

..... Post Code: .....

**Parent 1**

Name: : .....D.o.B : .....

Address: .....

.....Post Code: .....

**Parent 2**

Name: .....D.o.B: .....

Address: .....

.....Post Code: .....

I can confirm that this pupil is a registered pupil at:

..... School, and that the admissions

register for the school shows the above named to be his/her parent\*.

I can confirm that all our attendance registers are marked in respect of authorised or unauthorised absence in accordance with the guidance issued by the Department for Education, i.e. using registration code 'G' for 'Family Holiday' (NOT agreed or days in excess of agreement).'

In making this request, I confirm that such action would not conflict with other intervention strategies already in place or other enforcement measures already being processed. I can also confirm that the governing body of this school has reviewed both its attendance and extended leave of absence policies and agreed that this school will request the local authority to issue penalty notices in appropriate cases.

I attach copies of the completed 'application for leave of absence in exceptional circumstances from school' form/letter and my written reply informing the parent(s) that this request has not been approved – in accordance with the school's policy on leave of absence in exceptional circumstances in term time - and advising that if the pupil is absent during this time he/she will have their absences marked as unauthorised, and that this may render the parent(s) liable to a penalty notice.

**Dated this:** .....**day of:** .....20.....

**Signature:** .....

**Name (please print):** .....

Please send this form fully completed to the Manager of the Attendance and Welfare Service

\*The expression "parent", in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has care of the child.

## Appendix 4

Dear Parent/Carer

I refer to your application for **[name of child]** to be absent for **[number of days]** days during term time.

Following due consideration, I am unable to agree to your request as the reason provided is not considered as an exceptional circumstance.

I am sending a copy of this letter to the Managers of the Attendance and Welfare Service for information. I must warn you that, if you do take your child out of school for this time, the absences will not be authorised and the Attendance and Welfare Managers may issue a penalty notice to each parent of £60 for each child to be paid within 21 days. If the penalty is not paid within the time scale the penalty will increase to £120. If the higher penalty is not paid the Attendance and Welfare Service may then institute legal proceedings against you in the magistrate's court under Section 444 of the Education Act 1996 for failing to ensure your child attends school regularly.

The matter will also be recorded on your child's school record.

If you would like to meet with me to discuss this matter, please contact me to arrange an appointment.

Yours sincerely,

Headteacher



## Appendix 5

Dear Parent/Carer,

I write regarding your child's recent unauthorised absence from **[date]** to **[date]**.  
As you are aware, leave of absence in exceptional circumstances is not permitted without the permission of the Headteacher as taking children out of school during term time disrupts their school routine and learning.

Despite being informed of the school's policy and consequences for doing so you chose to continue to take **[name of child]** on holiday during term time without authorisation. As such you are now being referred for a Penalty Notice under Section 444a of the Education Act (1996) for failing to ensure the regular attendance of your child(ren).

The penalty notice is being requested in line with the Code of Conduct administered by Sefton Council. If accepted, the notice will be sent to you in due course at which time details regarding the payment will be explained.

We thank you for your support in ensuring that your child is not absent from school during term time in future.

Yours sincerely,

Headteacher

## Appendix 6

Dear Parent/Carer

Section 444A, Education Act 1996  
**[The Education (Penalty Notices) (England) (Amendment) Regulations 2013]**

Re:

Date of birth:

School:

The Headteacher of Town Hall School advised you on [date] of the decision not to grant your child discretionary leave of absence between [date] and [date]

As your sons unauthorised absence has exceeded the penalty notice threshold, I have issued you with the enclosed penalty notice. Please read the notice carefully as it states the offence and the methods of payment.

I wish to remind you that the penalty is £60 if paid on [date] or £120 if paid after [date] but before on [date]. You will be prosecuted in the magistrates court for this offence should you fail to pay the fine by the closing date

Please note that where there is more than one parent/carer liable for this offence, separate notices are issued to each person, per individual child, ie there are no duplicate letters and each penalty [and associated total invoice] you and, where applicable, your spouse/partner receive must be paid

Yours sincerely

Tracy McKeating  
Manager – Attendance and Welfare Service

## Appendix 7

Dear Parent/Carer ,

**Re: School Attendance and Exclusion Sweep (previously known as truancy sweep).**

On **[date]** your son/daughter, **[name of child]** , was stopped during the school attendance and exclusion sweep, carried out under Section 16 of the Crime and Disorder Act 2003, when s/he should have been in attendance at school.

This absence has not been authorised by the Headteacher of **[name of school]** School and the school register shows there have been **[number]** unauthorised absences during the preceding 6 school weeks.

I must warn you that, if there are further unauthorised absences within the next 6 school weeks, the local authority will issue a penalty notice, which will require you to pay a fine of £60 or £120.

Yours sincerely,

Tracy McKeating  
Manager - Attendance and Welfare Service



## Appendix 9

1.	<b>Request has been correctly filled out and completed by the school, and signed &amp; dated by the Headteacher</b>	<b>Please Tick</b>
a.	The correct request form has been completed for any leave of absence during term time.	
b.	All sections have been fully completed and relevant details entered, e.g. parents <b>full</b> names, contact details and signed by Headteacher.	
c.	Check that where there are two parents with parental responsibility, that both parents' details (including full names) are listed on the request form.	
d.	A copy of the student's attendance register print-out is attached.	
e.	A copy of <b>either</b> the school's letter sent to parents/carers informing them of the Headteacher's decision to apply to the local authority for a penalty notice <b>or</b> AWS Appendix 7 (15 school days) formal warning letter.	
f.	Where relevant, has an 'Application for any leave of absence during term time unless there are exceptional circumstances from school' form also been properly completed and submitted?	

2.	<b>Issuing a warning letter or fixed penalty notice would be within the agreed code of conduct.</b>	<b>Please Tick</b>
a.	Check that issuing a warning letter or penalty notice would not conflict with any current AWS involvement or previous court outcomes?	
b.	Consider whether a penalty notice is the correct measure to be used in this case, e.g. have the parents/carers been issued with previous penalty notices or if the child's attendance is very low, would fast-track to prosecution be a more appropriate intervention?	
c.	The school has marked the registers correctly, e.g. there are no 'N' codes and any unapproved family holidays are coded as 'G'.	
d.	<p>(i) Truancy and Lateness:</p> <ul style="list-style-type: none"> <li>• Check that there would be enough unauthorised absences (minimum of 10 pupil sessions in a term <b>or</b> 18 sessions in two consecutive terms) <b>and</b> that these would fall during the 6 month evidential period if the case was to go to court (allow for 3 x school weeks' monitoring period following warning, 6 x weeks PN notice period and 2 x weeks admin time, i.e. total of 11 weeks);</li> <li>• State the evidential dates that the child failed to regularly attend between (should the parents/carers fail to pay the penalty notice and we need to proceed to prosecution).</li> </ul>	
	<p>(ii) Unapproved leave of absence:</p> <p>Check that:</p> <ul style="list-style-type: none"> <li>▪ Unapproved leave has been marked (and remains) as unauthorised absence; and that</li> <li>▪ this is in accordance with the school's leave of absence/ exceptional circumstances procedure as published in their attendance policy; and</li> <li>▪ the child has not been unlawfully removed from the school's admission register (school roll).</li> </ul>	
e.	The use of education-related PNs has been included (in consultation with the	

	school's governing body) in the school's attendance policy <b>(NB this does not apply if the PN is being initiated by the Attendance and Welfare Service).</b>	
f.	With any penalty notice request for 'truancy' <b>(including those initiated by the AWS)</b> a certificate of attendance signed by the Headteacher <b>must</b> also be submitted. This certificate of attendance needs to be completed from either the first day of the current academic year <b>or</b> shows at least 12 consecutive weeks' of attendance data.	

<b>3.</b>	<b>All penalty notices, whether requested over parental condoned "truancy" or unapproved leave of absence, needs to be handed (with a copy of this completed checklist) to the Attendance and Welfare Manager for signing.</b>	
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Pupil's Name: .....

Evidential period dates: .....

EWO's Name: .....

EWO's Signature: ..... Date: .....

Attendance and Welfare Manager's Signature: ..... Date: .....