

# Norfolk County Council Code of Conduct for issuing Fixed Penalties regarding School Attendance

**The Education (Penalty Notices) (England) Regulations 2007, 2012 and 2013**

**Effective from September 2020**

# Introduction to all Head teachers and School Attendance Leads

The Norfolk County Council Attendance Team is writing to draw your attention to Norfolk County Council's revised code of conduct for the provision of administering penalty notices for non-school attendance and for unauthorised absence. The purpose of this code of conduct is to ensure that the associated powers are applied consistently and fairly across the Local Authority area and that suitable arrangements are in place for the administration of penalty notices.

For the purpose of this code of conduct the term "school" refers to any primary or secondary phase school regardless of their status as maintained, academy or independent sector as well as Special Schools, Free schools or Pupil Referral Units.

Section 23 of the Anti-Social Behaviour Act 2003 and section 103 of the Education and Inspections Act 2006 enable Local Authorities to issue penalty notices for certain offences. These notices can be used as an alternative to prosecution under section 444 of the Education Act 1996 and enable parents to discharge potential liability for conviction for that offence by paying a penalty.

A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance at school or whereabouts during school hours but is not willing to take responsibility for doing so. However, the Local Authority does not advocate their use for entrenched patterns of poor attendance and will consult with a school when it's suitability as a legal intervention is uncertain.

This code of conduct is issued under The Education (Penalty Notices) (England) Regulations 2007. These regulations were subsequently updated in 2012 and 2013. The Local Authority's Attendance Team is authorised to act under this code and will strive to ensure the consistent, fair and transparent application of the policy regarding penalty notices throughout the County.

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 school agreements and website information is readily accessible and includes the warning that parents may be issued with a penalty notice for any unauthorised absence, including unauthorised term-time holidays.

The responsibility for classifying an absence lies with the school; the Attendance Team will issue a penalty notice based on the school's classification and other evidence supplied with the referral. The code of conduct can also be found on the Norfolk County Council's website. Further questions or guidance around the code of conduct can be dealt with by the Norfolk County Council Attendance Team.

Katie Griffiths  
Attendance & Entitlement Manager

# Legal Basis for Issuing Penalty Notices

This code of conduct has been drawn up to comply with The Education (Penalty Notices) (England) Regulations 2007 that came into force on 1<sup>st</sup> September 2007. These regulations were subsequently updated in 2012 and 2013.

## Definition of a parent

All those recognised as a parent under section 576 of the Education Act 1996 are parents for the purposes of this code of conduct. A penalty notice may be issued to each parent liable for the offence or offences.

## Parental responsibility for regular school attendance

It is a legal requirement under section 7 of the Education Act 1996 that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability and aptitude and to any special educational needs that they may have. A child reaches compulsory school age at the start of the term on or after their fifth birthday and continues to be of compulsory school age until the last Friday of June in the school year that they reach 16. Notices cannot therefore be issued to children in reception who have not yet reached compulsory school age.

Sections 444A and 444B of the Education Act 1996 (introduced by section 23 of the Anti-Social Behaviour Act 2003) introduced penalty notices as an alternative to prosecution under section 444. Parents may discharge their potential liability for conviction for an offence under section 444 by paying a penalty.

***There is no legal requirement for a penalty notice to be issued before proceeding to prosecution through the magistrate's court.***

The attendance register is a legal document and must always be treated as such. The register must be maintained as a wholly accurate and current record of a pupil's education provision and their attendance at that provision.

# Issuing Penalty Notices

In Norfolk, only the Local Authority (through the Attendance Service) can issue penalty notices. The Attendance Team is authorised to act under this code and will strive to ensure consistent, fair and transparent application of the policy regarding penalty notices. When a penalty notice is unpaid, we will take legal action under section 444(1) of the Education Act 1996 for the original offence.

In considering the use of a penalty notice, it is important to establish that an offence is being committed and that the issue of the notice is likely to be an effective means of improving the child's school attendance. There must be evidence that:

- The child is of compulsory school age
- The child is a registered pupil at a school
- The child is failing to attend school regularly
- The child is not in the last term of compulsory education

It should be established that none of the available statutory defences apply, these are:

- the pupil has been granted leave by the head teacher;
- the pupil was unwell or prevented from attending by any unavoidable cause;
- the absence was on a day exclusively set aside for religious observance by the religious body to which the parent belongs;
- the Local Authority have a duty to make travel arrangements in relation to the child for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty;
- the parent can show that their trade or business requires them to travel, and the child has attended school as regularly as the nature of the trade or business allows, and the child has attended school for at least 200 sessions during the preceding twelve months.

Schools wishing to participate in the fixed penalty notice scheme must issue all parents/carers with a warning letter (see appendix 1) informing them of the system; this should be issued annually at the start of each academic year and dated accordingly or if a child joins mid-year, they need to receive a warning letter at the time of induction. The warning letter that schools are required to issue is available via the [Norfolk Schools' website](#). Head teachers should be aware that by submitting requests for a penalty notice to be issued, they are assuring the Local Authority that they accept and support that, should the parent choose not to make payment within 28 days of the fine being issued, the Local Authority Attendance Service will progress the matter in line with Section 444 Education Act 1996 resulting in the parents being prosecuted for their failure to ensure the regular attendance of their child.

To ensure consistent delivery of penalty notices, the following criteria will apply:

- at least 9 sessions (4.5 school days) lost to unauthorised absence by the pupil during the last 6 school weeks

The issuing of a penalty notice is considered appropriate:

- when the pupil has been absent for the purposes of a holiday during term-time and the absence has not been authorised by the school
- when the pupil has arrived in school after registration has closed and the session has been recorded with a 'U'
- when the pupil has accrued unauthorised absence from school **and following consultation with the Local Authority Attendance Service it has been agreed that the issuing of a penalty notice is an appropriate early intervention tool**

The Education (Pupil Registration) (England) (Amendment) Regulations 2013, state head teachers may not grant any leave of absence during term time unless there are exceptional circumstances (no definition is given within this legislation). Head teachers should determine the number of sessions a child can be away from school if the leave is granted.

In cases meeting referral criteria for issue of a penalty notice where unauthorised term-time holiday absence is the only reason for absence, Norfolk County Council will only issue a penalty notice to the parents who took the pupil out of school or gave permission for the pupil to be removed from school for the purpose of a term time holiday. In all other cases of unauthorised absence, Norfolk County Council will issue a penalty notice to all parents under the definition above. For these reasons, it is crucial that schools ensure their admissions registers are up to date and accurate and all parental information is provided on the penalty notice referral form.

The Attendance Team issues penalty notices on behalf of schools and will always serve them by first class post.

### Multiple Issue of Notices

A parent may receive more than one separate penalty notice resulting from unauthorised absence.

When penalty notices are issued each parent will receive one per child. Therefore, each parent could receive multiple notices if they have more than 1 child who has been absent.

In some circumstances, the Attendance Team may choose not to issue a second penalty notice in the same academic year and may instead choose to prosecute a parent under the Education Act 1996 S444 (1).

## Withdrawal of Penalty Notice

The Education (Penalty Notices) (England) Regulations 2007 limit the circumstances in which local authorities can withdraw penalty notices and the normal response to non-payment of a penalty notice will be prosecution for the offence to which the notice relates.

The only grounds in which a penalty notice - once issued - can be withdrawn are:

- It ought not to have been issued i.e. where it has been issued outside of the terms of the Local Protocol or where no offence has been committed.
- It has been issued to the wrong person
- It contains material errors
- The penalty notice remains unpaid and the Local Authority opt not to proceed with a prosecution under Education Act 1996 Section 444 (1).

Where schools wish to provide evidence to the Local Authority to consider withdrawing a penalty notice once issued, they must email [csattendance@norfolk.gov.uk](mailto:csattendance@norfolk.gov.uk) with the pupils attendance record showing the absences in question as authorised and with clear rationale why authorisation is being given.

There is no right of appeal against a penalty notice. If the penalty notice is not paid, the Local Authority can proceed to prosecution. A head teacher's decision on authorisation of absence is final. Therefore, applications for leave must be made in advance so that the head teacher has time to consider the application and be satisfied that there are exceptional circumstances which warrant the leave.

## Payment of Penalty Notices

The arrangement for the payment will be detailed on the penalty notice. The penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of the receipt of the notice (a notice served by post is deemed to have been received on the second day after posting it by first class post).

The Local Authority will retain any revenue from penalty notices to cover enforcement costs.

## Prosecution for non-payment of a Penalty Notice

The prosecution would not be for non-payment of the penalty notice, but for the original offence of failing to ensure the child's regular attendance at school. The Attendance Team may use the fact that a penalty notice has been issued and remains unpaid as evidence. The Attendance Team would look at all the circumstances of the case when assessing the likelihood of securing a conviction for the original attendance offence.

If the decision is made to proceed with prosecution the parent or carer will be issued with a Notice of Intended Prosecution in the first instance.

## Exclusions

Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent must ensure that his or her child is not present in a public place during school hours without reasonable justification during the first five days of each fixed period or permanent exclusion.

A penalty notice may only be issued when there is no reasonable justification for the child being in public during school hours. Reasonable justification may include pre-arranged medical and dental appointments or emergency appointments. It might also be necessary for a child to accompany a parent with similar appointments if the parent considers it inappropriate to leave the child unsupervised. Attendance at a court hearing or an interview at a police station or with the Youth Offending Service may also provide reasonable justification.

The days of exclusion when this duty applies 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. The parent is responsible for the child during the specified days upon receipt of the notice.

Where a penalty notice is requested by a school, it will be necessary for them to evidence that notice under section 104 of the Education and Inspections Act 2006 has been given to a parent of the pupil.

In addition to the above, the school must have evidence that the excluded pupil was present in a public place during school opening hours without reasonable justification. The time and date must be provided to ensure that this falls within the time the school at which the pupil is on roll is open and that the incident occurred within the period set out in the notice issued under section 104 of the Education and Inspections Act 2006.

The notice allows the parent to pay a penalty as a way of discharging any liability for the offence. The parent must be notified by the school at the time of the exclusion of their duty and the days to which it relates.

Where a penalty has not been paid, it will be necessary for the person who requested the issue of a penalty notice to provide evidence for the court by way of a Section 9 statement (a witness statement admissible in court under the Criminal Justice Act and the Magistrates' Courts Act and Rules).

If the defendant requests the author of a Section 9 statement to be present at the court hearing the Local Authority Attendance Team will notify the person concerned as soon as such requests are made.

## Monitoring and Review

The Attendance Team must maintain records of penalty notices including:

- A copy of each notice issued
- A record of all payments made and when they were paid
- Whether the notice was withdrawn and on what grounds
- Whether the penalty notice led to a prosecution and the outcome.

This code of conduct will be reviewed on a regular basis, and as a minimum when changes to relevant legislation and regulations are made.

## Appendix 1: Template Letter

Dear Parent/Carer,

Date:

### Attendance at school and legal intervention

[Research](#) commissioned by the Department for Education shows missing school for even a day can mean a child is less likely to achieve good grades, which can have a damaging effect on their life chances. At [INSERT NAME OF SCHOOL] our aim is to work with parents to ensure that all our pupils receive the most from their education and reach their full potential.

This letter is to remind all parents/carers regarding the law that requires them to ensure that their child attends school regularly. The Government remains very clear that no child should miss school apart from in exceptional circumstances and schools must continue to take steps to reduce absence to support children's attainment.

In the DfE policy document entitled, 'School Attendance: Guidance for maintained schools, academies, independent schools and local authorities' it states, '*Head teachers should not grant leave of absence unless there are exceptional circumstances. **The application must be made in advance and the head teacher must be satisfied that there are exceptional circumstances based on the individual facts and circumstances of the case which warrant the leave. Where a leave of absence is granted, the head teacher will determine the number of days a pupil can be away from school. A leave of absence is granted entirely at the head teacher's discretion.***

If the school does not receive a request for leave, the head teacher will be unable to consider your individual circumstances and the absence will be recorded as unauthorised. There will be no obligation on the head teacher to reconsider authorising the leave if an application has not been made in advance.

The Local Authority operates a system where any pupil will meet the criteria for legal intervention where they have:

- at least 9 sessions (4.5 school days) lost to unauthorised absence by the pupil during the last 6 school weeks

The intervention could be in the form of a fixed penalty notice. Any pupil at [INSERT NAME OF SCHOOL] who meets the criteria, will be referred to the Local Authority for action to be considered.

If a fixed penalty notice is issued the arrangement for the payment will be detailed on the penalty notice. The penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of the receipt of the notice. The fixed penalty notice is per parent per child. You should be aware that failure to pay the total amount within the timescale will result in legal action being taken.

I hope we can count on your support in this matter, please do not hesitate to contact me if you have any questions.

Yours sincerely, Headteacher