



City of York Council Education and Skills

City of York Code of Conduct for the use of
Education Related Penalty notices

July 2020

	Penalty notice Protocol
1	Legal framework
1.1	<p>Sections 444A and 444B of the Education Act 1996 (the act) empower authorised local authority (LA) officers, headteachers (or a member of school staff authorised by the headteacher), or the police to issue penalty notices (PNs) in cases of unauthorised absence from school. The authorised person must have reason to believe that a person has committed an offence under section 444(1) of the act. There is no right of appeal against a penalty notice and the imposition of one is not a criminal prosecution. As such, the requirement to consider an Education Supervision Order (ESO) is not necessary.</p> <p>The Education (Penalty Notices) (England) Regulations 2007 (the Regulations) prescribe the necessary details for the operation of the penalty notice scheme. Regulation 14 provides that each local authority is responsible for drawing up a code of conduct to ensure consistency in the issuing of penalty notices. Therefore, it is the code of conduct, together with the relevant legislation and guidance, that will determine how the local authority should proceed in non-attendance matters and it may be subject to variation between local authorities.</p> <p>In July 2020 the Department for Education issued additional guidance for schools, and separate guidance for parents, regarding the return to schools of all pupils in the Autumn term 2020 following the closure of schools due to Covid 19. This set out that the normal rules on school attendance would apply including:</p> <ul style="list-style-type: none"> • parents' duty to secure that their child attends regularly at school where the child is a registered pupil at school and they are of compulsory school age • schools' responsibilities to record attendance and follow up absence • the availability to issue sanctions, including fixed penalty notices in line with local authorities' codes of conduct <p>Excerpts from, and links to, this guidance are available within Appendix1.</p>
1.2	The issuing of penalty notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.
1.3	The Local Authority (LA) has the prime responsibility for developing the protocol within which all partners named in the Act will operate.
2	Rationale

2.1	Regular and punctual attendance at school, or alternative provision, is both a legal requirement and essential for pupils to maximise their educational opportunities.
2.2	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 to school agreements and website information are readily accessible and include the warning that parents may be issued with a penalty notice for any unauthorised absence, including unauthorised term time holidays. School governors should be in agreement with the endorsement of the use of penalty notices.
2.3	In law an offence occurs if a parent or carer fails to secure a child's attendance at the school at which they are a registered pupil and that absence is not authorised by the school. Penalty notices supplement the existing sanctions currently available under Section 444 of the Education Act 1996 or Section 36 of the Children Act 1989 to enforce attendance at school where appropriate.
2.4	<p>Parents, carers and pupils are supported at school and at partner agencies level to overcome apparent barriers to regular attendance through a wide range of assessment and intervention strategies, for example via schools pastoral support systems and Local Area Teams (LAT).</p> <p>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. They will be used as a means to support parents to meet their responsibilities in law and where there is reasonable expectation that their use will secure an improvement.</p> <p>Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.</p> <p>Family circumstances and the ability to pay is judged against the likelihood of securing an improved attendance by issuing a penalty notice (this to include any cases of possible multiple issue to any one family).</p> <p>These measures are permissive and it is for individual governing bodies and the local authority to decide whether to use them. In exercising these powers governing bodies, headteachers and local authority officers should have regard to their safeguarding duties.</p>
2.5	<p>Before requesting issue of a penalty notice for unauthorised absence, other strategies should be considered that may help the child concerned return to regular school attendance.</p> <p>These might include:</p>

	<ul style="list-style-type: none"> • writing to the child’s parents to remind them of their legal responsibilities • meeting with the child’s parents • ensuring a first-day response to any absence • setting targets for improvement • involvement of other services or agencies such as LAT, wellbeing service etc. <p>Please note: The above strategies do not apply to term time leave or holiday.</p>
3	Circumstances where a penalty notice may be issued
3.1	To ensure consistent practice penalty notices will be issued only in cases of unauthorised absence and may be considered in the following circumstances.
3.2	<p>Persistent unauthorised absence.</p> <p>At least ten sessions (five school days) of unauthorised absence in the previous 12 school weeks. Following a warning letter being sent, an invite to a school attendance panel and a monitoring period (setting a period of 15 school days in which to effect the improvement) then a penalty notice can be issued. The ten sessions need not be consecutive.</p>
3.3	<p>Unauthorised term time leave</p> <p>The Education (Pupil Registration) (England) (Amendment) Regulations 2013, state headteachers may not grant any leave of absence during term time unless there are exceptional circumstances (no definition is given within this legislation). This has been supported by the Supreme Court judgement of April 2017 on unauthorised holidays taken in term time.</p> <p>In these circumstances where a headteacher does not authorise a request from a parent or carer for an absence they will respond to the request directly. This response will constitute a valid warning to the parent about a potential penalty notice. In all cases, a minimum of 10 sessions in total (five school days) of absence must have been accrued. The absences will be consecutive. In these circumstances, penalty notices will be issued as they are not exceptional or unavoidable. The absences must be recorded as a ‘G’ code in the attendance register. Copy of a letter to the parent or carer advising them that they are at risk of being issued with penalty notice should be on the school file.</p> <p>(If parents have not applied in advance then, by default the absence is not agreed, as leave of absence cannot be approved retrospectively).</p>
3.4	Unauthorised delayed return from extended holidays (the pupil fails to return on agreed date).

	<p>Following a warning, a penalty notice can be issued. In these circumstances, headteachers should make clear to parents and carers the date of when the pupil will be expected to return to school, warning them that if they fail to return on the date then a penalty notice maybe issued.</p>
3.5	<p>Persistent late arrival at school (after the register has closed).</p> <p>Equivalent to a minimum of 10 sessions accrued in a 12 school week period. Following a warning letter being sent, an invite to a school attendance panel and a monitoring period (setting a period of 15 school days in which to effect the improvement) then a penalty notice can be issued.</p> <p>The late mark (code U) for an unauthorised absence should be recorded.</p>
3.6	<p>Persistently late arrival (before the register has closed) (coded L).</p> <p>A penalty notice can be issued following a warning letter being sent, an invite to a school attendance panel and a monitoring period (setting a period of 15 school days in which to effect the improvement) then a penalty notice can be issued where the threshold of 10 sessions over the previous 12 school weeks has been met.</p> <p>The school should clearly communicate to parents that they will categorise as unauthorised any further lateness (code O).</p>
3.7	<p>Excluded pupils (fixed term or permanent)</p> <p>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.</p> <p><i>N.B:</i> <i>School premises are not a public place for this purpose (Section 547 Education Act 1996).</i></p> <p>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.</p> <p>In order for the local authority 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.</p>

	<p>The following documentation is required to be submitted to the local authority:</p> <ul style="list-style-type: none"> • 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
3.8	<p>There will be no restriction on the number of times a parent or carer may receive a formal warning of a possible issue of a penalty notice.</p> <p>The maximum number of penalty notices is two per child, per parent, during a 12-month period.</p> <p>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.</p>
3.9	<p>In all cases involving a Looked after child the school must also send a copy of the warning letter to the child's social worker, as well as to the Director of Children's Services for the local authority which has responsibility for the child.</p>
4	<p>Procedure for issuing penalty notices</p>
4.1	<p>In the City of York penalty notices can be issued by the School Attendance Adviser following a request from a headteacher (or a member of staff authorised by the headteacher such as a deputy or assistant headteacher) or police officer. This will ensure consistent and equitable delivery, protect school-home relationships and allow cohesion with other enforcement sanctions.</p>
4.2	<p>Schools can contact the School Attendance Adviser to request the issue of a penalty notice, if the circumstances detailed within the code of conduct have been met.</p> <p>The following documentation needs to be submitted:</p> <ul style="list-style-type: none"> • Certificate of Attendance - for the period in question completed and signed by the Headteacher. This may straddle two academic years • Leave of Absence application form - if appropriate • Letter of refusal to the parent - if appropriate • Warning letters – if appropriate • Attendance panel minutes- if appropriate • Parenting contract –if appropriate

	In cases regarding unauthorised leave of absence documentation should be submitted preferably no more than two weeks following the taking of the unauthorised leave.
4.3	Penalty notices issued by City of York will only be issued by first class post, using City of York invoices, and never as an on the spot action. This is to ensure that the evidence to support the penalty notice is sound and meets Health and Safety requirements.
4.4	The School Attendance Adviser will normally respond to all requests within 10 school days of receipt.
5	Procedure for withdrawing penalty notices
5.1	Once issued, a penalty notice may only be withdrawn in the following circumstances: <ul style="list-style-type: none"> • it ought not to have been issued • it ought not to have been issued to the person named as the recipient • it contained material errors • the use of the penalty notice does not conform to this code of conduct • the period for payment has expired (and consideration will now be given to prosecution under section 444 (1) or section 444 (1A) of the act).
6	Payment of penalty notices
6.1	Arrangements for payment will be detailed on the penalty notice.
6.2	Payment of a penalty notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the penalty notice.
6.3	Payment of a penalty notice within 21 days is £60 and payment after this time but within 28 days is £120.
6.4	Payment cannot be made by instalment.
6.5	The local authority retains any revenue from penalty notices to cover enforcement costs (collection or prosecuting in the event of non-payment).
7	Non-payment of penalty notices
7.1	Non-payment of a penalty notice will result in the withdrawal of the notice and will trigger consideration of the prosecution process under the provisions of Sec 444, 1996 Education Act.

8	Policy & publicity
8.1	The use of penalty notices as a sanction is included on the attendance page of the York Education website: yorkeducation.co.uk
8.2	<p>School Attendance policies should include information on the deployment of penalty notices and this will be brought to the attention of all parents.</p> <p>A clear procedure for requesting Leave of Absence and the school response to unauthorised absence should be available to parents and mentioned in relevant policies and on the school website.</p> <p>Other measures to ensure parents are fully aware of the potential consequences of pupils with leave of absence and unauthorised absence which is not authorised by the headteacher may include:</p> <ul style="list-style-type: none"> • parents being written to annually to inform them of the schools position regarding leave of absence in term time and unauthorised absence. Such letters need to be sent to all parents with consideration to a copy being placed in each pupils file. This is particularly important as it may be part of any evidence presented to court should any enforcement action need taking in the event of a penalty notice not being paid • the handbook and school website for parents contains information about the school's position and views on leave of absence in term time and unauthorised absence.
8.3	The local authority will include information on the use of penalty notices and other attendance enforcement sanctions in promotional/ public information material.
9	Reporting & review
9.1	The School Attendance Adviser will report at regular intervals to the Assistant Director (Education and Skills) on the deployment and outcomes of penalty notices.
9.2	This code of conduct will be reviewed annually. Amendments to this code will be made in line with any legislative changes. This may require further consultation as appropriate
9.3	Headteachers should report to the governors on an annual basis giving details of the penalty notices issued on parents of pupils within their school.

Appendix

Below are excerpts from, and links to two sets of DfE Guidance dealing with the reopening of schools in the Autumn Term 2020 following the closure for Covid19. There is separate guidance for schools and for parents/carers.

[Guidance for full opening: schools](#)

Attendance expectations

In March when the coronavirus (COVID-19) outbreak was increasing, we made clear no parent would be penalised or sanctioned for their child's non-attendance at school.

Now the circumstances have changed and it is vital for all children to return to school to minimise as far as possible the longer-term impact of the pandemic on children's education, wellbeing and wider development.

Missing out on more time in the classroom risks pupils falling further behind. Those with higher overall absence tend to achieve less well in both primary and secondary school. School attendance will therefore be mandatory again from the beginning of the autumn term. This means from that point, the usual rules on school attendance will apply, including:

- parents' duty to secure that their child attends regularly at school where the child is a registered pupil at school and they are of compulsory school age;
- schools' responsibilities to record attendance and follow up absence
- the availability to issue sanctions, including fixed penalty notices in line with local authorities' codes of conduct

Pupils who are shielding or self-isolating

We now know much more about coronavirus (COVID-19) and so in future there will be far fewer children and young people advised to shield whenever community transmission rates are high. Therefore, the majority of pupils will be able to return to school. You should note however that:

- a small number of pupils will still be unable to attend in line with public health advice because they are self-isolating and have had symptoms or a positive test result themselves; or because they are a close contact of someone who has coronavirus (COVID-19)
- shielding advice for all adults and children will pause on 1 August, subject to a continued decline in the rates of community transmission of coronavirus

(COVID-19). This means that even the small number of pupils who will remain on the shielded patient list can also return to school, as can those who have family members who are shielding. Read the [current advice on shielding](#)

- if rates of the disease rise in local areas, children (or family members) from that area, and that area only, will be advised to shield during the period where rates remain high and therefore they may be temporarily absent (see below).
- some pupils no longer required to shield but who generally remain under the care of a specialist health professional may need to discuss their care with their health professional before returning to school (usually at their next planned clinical appointment). You can find more advice from the Royal College of Paediatrics and Child Health at [COVID-19 - 'shielding' guidance for children and young people](#).

Where a pupil is unable to attend school because they are complying with clinical and/or public health advice, we expect schools to be able to immediately offer them access to remote education. Schools should monitor engagement with this activity (as set out in the section below).

Where children are not able to attend school as parents are following clinical and/or public health advice, absence will not be penalised.

Pupils and families who are anxious about return to school

All other pupils must attend school. Schools should bear in mind the potential concerns of pupils, parents and households who may be reluctant or anxious about returning and put the right support in place to address this. This may include pupils who have themselves been shielding previously but have been advised that this is no longer necessary, those living in households where someone is clinically vulnerable, or those concerned about the comparatively increased risk from coronavirus (COVID-19), including those from Black, Asian and Minority Ethnic (BAME) backgrounds or who have certain conditions such as obesity and diabetes.

If parents of pupils with significant risk factors are concerned, we recommend schools discuss their concerns and provide reassurance of the measures they are putting in place to reduce the risk in school. Schools should be clear with parents that pupils of compulsory school age must be in school unless a statutory reason applies (for example, the pupil has been granted a leave of absence, is unable to attend because of sickness, is absent for a necessary religious observance etc).

Action for all schools and local authorities

We are asking schools to work with families to secure regular school attendance from the start of term as this will be essential to help pupils catch up on missed education, make progress and promote their wellbeing and wider development.

We are asking schools and local authorities to:

- communicate clear and consistent expectations around school attendance to families (and any other professionals who work with the family where appropriate) throughout the summer ahead of the new school year
- identify pupils who are reluctant or anxious about returning or who are at risk of disengagement and develop plans for re-engaging them. This should include disadvantaged and vulnerable children and young people, especially those who were persistently absent prior to the pandemic or who have not engaged with school regularly during the pandemic
- use the additional catch-up funding schools will receive, as well as existing pastoral and support services, attendance staff and resources and schools' pupil premium funding to put measures in place for those families who will need additional support to secure pupils' regular attendance
- work closely with other professionals as appropriate to support the return to school, including continuing to notify the child's social worker, if they have one, of non-attendance

We will issue further technical guidance for schools to record attendance and absence, including what data schools will be asked to return to the department.

[What parents and carers need to know.](#)

School and college attendance

It is vital that children and young people return to school and college - for their educational progress, for their wellbeing, and for their wider development. School and college attendance will again be mandatory from the beginning of the new academic year. For parents and carers of children of compulsory school age, this means that the legal duty on you as a parent to send your child to school regularly will apply.

A small number of pupils will still be unable to attend in line with public health advice because they are self-isolating and have had symptoms or a positive test result themselves, or because they are a close contact of someone who has coronavirus (COVID-19). If your child is unable to attend school or college for this reason, you should talk to your school or college about what support is in place in terms of remote education.

Shielding advice for all adults and children will pause on 1 August, subject to a continued decline in the rates of community transmission of coronavirus (COVID-19).

This means that the small number of pupils who will remain on the shielded patient list can also return to school, as can those who have family members who are shielding. See the [guidance on shielding and protecting people defined on medical grounds as extremely vulnerable](#) for the current advice.

Some pupils no longer required to shield but who generally remain under the care of a specialist health professional may need to discuss their care with their health professional before returning to school in September (usually at their next planned clinical appointment).

Where children are not able to attend school as parents are following clinical and/or public health advice, the absence will not be penalised.

If you have concerns about your child returning to school or college, because you consider they may have other risk factors, you should discuss with your school or college the measures they are putting in place to reduce risks in line with government guidance.

Many families will want to take a holiday over the summer period, which may involve travelling abroad. As ever, parents should plan their holidays within school and college holidays and avoid seeking permission to take their children out of school during term time.

Ultimately, local authorities and schools have a range of [legal powers to enforce attendance](#) if a child or young person misses school without a valid reason.

There is not a corresponding legal duty for post-16 education. However, if a young person fails to attend, their college may believe that they have left the course. This could result in your local authority getting in touch to support your child to find an alternative course or education provider.