

Attendance (statutory functions), Child Employment/Entertainment & Elective Home Education/Children Missing Education & Permanent Exclusions - (ACE)

Penalty Notice Code of Conduct

1. LEGAL BASIS

1.1 The Anti-Social Behaviour Act 2003 s23 empowers designated Local Authority (LA) officers, head teachers (and deputy and assistant head teachers authorised by them), and the Police to issue penalty notices in cases of unauthorised absence from school.

1.2 The Education (Penalty Notices) (England) Regulations 2004 came into force on 27th February 2004. The regulations were updated with amendments in 2007, 2012 and 2013.

1.3 The issuing of penalty notices must conform to all requirements of the Human Rights Act 2000 and all equal opportunities legislation.

1.4 London Borough of Hammersmith & Fulham (LBHF), have the prime responsibility for developing the Code of Conduct within which all partners named in the Act will operate.

1.5 In LBHF ACE team is responsible for coordinating legal action in relation to school attendance.

2. RATIONALE

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

2.2 In law an offence occurs if a parent or carer fails to secure a child's regular attendance at a school at which he or she is a registered pupil. Penalty notices supplement the existing sanctions to enforce attendance at school. These are to prosecute parents/carers (Education Act 1996 s444(1) & 444 (1a)) or to apply for an Education Supervision Order, under the Children Act 1989 s36.

2.3 Parent/carers and pupils are supported at school and Local Authority level to overcome barriers to regular attendance through a range of assessment and intervention strategies. 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.

2.4 Sanctions are used only as a means of enforcing attendance, where there is a reasonable expectation that their use will secure an improvement, and to emphasise the importance of parental responsibility.

3. CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

3.1 The issue of a Penalty Notice may be considered in cases where a pupil is absent from school and the absence is **unauthorised**. Penalty Notices can be used by schools as an alternative to a referral to Family Support in LBHF, in cases of persistent non-attendance. The issue of a Penalty Notice may be considered appropriate in any of the following circumstances:

- cases of overt truancy
- cases of parentally condoned absence, where this can be demonstrated.
- instances where parents take children out of school for holidays/leave in term time, without the head teacher's approval
- instances of excessive delayed return from holidays/leave in term-time, without prior school agreement.
- Persistent lateness (unauthorised)
- Where a child has been excluded from school and is found in a public place during school hours without reasonable justification within the first five days of the exclusion period.

3.2 To ensure consistent and fair delivery of Penalty Notices, they will be considered in cases of unauthorised absence where:

- They are likely to be effective in improving attendance rates; *and*
- The pupil concerned has failed to attend school regularly over a six-week period (when his/her attendance has fallen below 90%) *and/or*
- Holiday/leave is deliberately taken in term time despite permission not being granted by school staff and holiday/leave amounted to 8 or more sessions. *or*
- Holiday/leave in term-time has been agreed by school staff but pupil arrives back 8 or more sessions after the period agreed. *or*
- A holiday/leave in term-time was taken, no permission had been sought and the period of absences amounted to 8 or more sessions.

3.3 Where families include more than one pupil with poor attendance, multiple penalty notices may be issued, but this should be subject to careful consideration and co-ordination.

3.4 For excluded pupils found in a public place during school hours, individual circumstances of each case must be carefully considered before a decision to issue a Notice. Reasons may include medical emergencies of parent or child, or pre-arranged medical appointment.

4. PROCEDURE FOR ISSUING PENALTY NOTICES

4.1 The ACE team will implement the issuing of penalty notices on behalf of LBHF under the authority of the Director of Children's Services to whom responsibility is delegated by law.

4.2 A parent will not normally receive more than one Penalty Notice resulting from the unauthorised absence of an individual child in any twelve-month period

4.3. If unauthorised absence persists after the issue of first Penalty Notice, it will usually be appropriate to prosecute.

4.4 The ACE team will receive a fully completed referral form, with accompanying documentation, and consider written requests to issue penalty notices.

This will ensure that there is;

- no duplication of notices being served
- a notice is not issued when legal proceedings are being contemplated under Education Act s444 or an application for an ESO is planned/being made

4.5 Schools, the Metropolitan Police and neighbouring Local Authorities must consider every aspect of a pupil's case before judging whether or not to request the ACE to issue a penalty notice. A Penalty Notice would not be considered if Family Support or Social Care are involved.

4.6 ACE will check that:

- All relevant information has been provided
- the circumstances of the pupil's absence meet all the requirements of this Code of Conduct
- the issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed
- other support services are appropriately consulted.

4.7 ACE will consider whether the issuing of a Penalty Notice is likely to improve attendance.

4.8 ACE will consult neighbouring boroughs if a Penalty Notice is being considered for a parent/carer whose child attends a school in LBHF but resides in another borough. This will ensure consistent and equitable delivery, retain school home relationships and allow cohesion with other enforcement sanctions.

4.9 Penalty notices will only be issued by post or email. Penalty notices will not be issued "on the spot" as this does not allow for the collation of evidence.

4.10 ACE will respond to all requests within ten school days of receipt of a referral. If ACE decides that the threshold has been met for a Penalty Notice to be issued, it will:

- Issue a Penalty Notice without warning from the Local Authority if a holiday/leave is taken without the school's permission, during term-time.
- issue a formal written warning to the parent or carer of the possibility of a penalty notice being issued where the occurrence of absence is regular or persistent
- in the same letter set a period of 15 school days within which the pupil must have no more than 4 sessions of unauthorised absence.
- issue a penalty notice at the end of the 15-day period if the required level of improvement has not been achieved.

5. WITHDRAWAL OF PENALTY NOTICES

ACE can only withdraw penalty notices in the following limited circumstances:

5.1 Where it ought not to have been issued i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed.

5.2 Where it has been issued to the wrong person.

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 parents' or carers' liability for the period in question. This means that parents or carers cannot subsequently be prosecuted for their failure to ensure that their children are attending school regularly and punctually 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. Failure to pay the fine after 28 days will result in consideration being given to prosecution in the Magistrate's Court.

6.4 ACE retains any revenue from penalty notices to contribute to enforcement costs (collection or prosecution in the event of non-payment).

7. NON-PAYMENT OF PENALTY NOTICES

7.1 Cases of non-payment of a Penalty Notice, may trigger consideration of prosecution of parents/carers in the Magistrate's Court (Education Act 1996 s.444(1) & 444 (1a)).

7.2 Non-payment of a Penalty Notice does not automatically result in a prosecution by the Local Authority. The Local Authority must decide there whether there is sufficient evidence to provide a realistic prospect of a conviction against each defendant. ACE team will also consult with the borough's Legal Services, if a prosecution is to be considered, to ensure that it is in the public interest/or in the best interests of the child to initiate a prosecution.