

**Leicester City Council**  
**Penalty Notice for Unauthorised Absence**  
**Code of Conduct**



**1. Rationale**

- 1.1 Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them. The Education Welfare Service will continue to investigate cases of irregular school attendance by undertaking targeted casework intervention and, where appropriate, instigate legal action under the Education Act 1996 for unauthorised absence. A Penalty Notice will be a useful sanction at an early stage before attendance problems become entrenched and where the LA considers that prosecution would be too heavy-handed.

**2. Legal Basis for the Issue of Penalty Notices**

- 2.1 The Anti-Social Behaviour Act 2003, Section 23, Sub-Section (1) adds two new Sections (444A and 444B) to Section 444 of the Education Act 1996. The Act empowers designated LA Officers, Headteachers (and Deputy / Assistant Head teachers authorised by them) and the Police to issue Penalty Notices. These sections enable Penalty Notices to be issued as an alternative to prosecution under Section 444 Education Act 1996 and enable parents to discharge liability for conviction for that offence by paying the penalty.
- 2.2 The Local Authority and any persons authorised to issue Penalty Notices must have regard to the Human Rights Act 1998, Equality Act 2010, and Data Protection Act 1998 and all Equality Opportunities legislation.
- 2.3 The Education (Penalty Notices) (England) Regulations 2004 have been revoked and replaced by The Education (Penalty Notices) (England) Regulations 2007, with effect from 1 September 2007.

### **3. Procedures for Issuing Penalty Notices**

- 3.1 The issue of Penalty Notices will be administered by the Education Welfare Service to ensure compliance with the Regulations and that provisions of this code do not conflict with other forms of statutory intervention pursued by the Education Welfare Service.
- 3.2 Penalty Notices will always be issued by first class post as there may be health and safety implications involved in the operation of direct delivery.
- 3.3 With certain exceptions, parents will receive a warning letter before a Penalty Notice is issued. Exceptions may include unauthorised leave of absence in term-time and where a child has been encountered on more than one truancy patrol. The warning letter will indicate the period of time over which improvement is expected (usually 15 school days) and the consequences of failing to ensure regular attendance.
- 3.4 The Education Welfare Service will consider requests to issue Penalty Notices from schools/colleges in the local authority and Leicestershire Constabulary. The Education Welfare Service will action these requests providing a signed attendance certificate from the head teacher is received with a declaration confirming that:-
- The circumstances of the case meet the criteria for the issue of a Penalty Notice, as specified in the Code of Conduct, and
  - All necessary information is provided to the Education Welfare Service in order to establish that an offence under Section 444 (1/1A) Education Act 1996 has been committed, and
  - In the case of an unauthorised period of leave of absence, a fully completed Penalty Notice form is submitted with the attendance certificate signed by the head teacher.
- 3.5 Primary responsibility for issuing Penalty Notices rests with the LA. Penalty Notices will only be issued subject to approval by the Service Manager of the Education Welfare Service, or his/her deputy(ies).

- 3.6 No parent will receive more than one Penalty Notice resulting from the unauthorised absence of an individual child in any twelve month period, unless the absence is due to unauthorised leave of absence, or the child being encountered for a second or subsequent time on a truancy patrol.
- 3.7 A Penalty Notice would not usually be issued in cases where a parent has been subject to previous conviction under Section 444(1) or (1A) Education Act 1996, within the previous year.
- 3.8 Within this Code of Conduct, parent is as defined in Section 576 Education Act 1996.
- 3.9 The collection of payments and issuing of receipts will be administered by the Education Welfare Service on behalf of the Local Authority with support from the Finance department.

#### **4. Circumstances for Issuing a Penalty Notice:**

- 4.1 The Education Welfare Service will generally only consider it appropriate to issue a Penalty Notice if, following assessment, a parent is judged capable of but unwilling to secure the required improvement in their child's school attendance.
- 4.2 A Penalty Notice will be issued when either;
- A pupil has at least 20 unauthorised absences recorded against their name within the previous 120 school sessions (i.e. equivalent of 10 school days in any 12 school week period), or
  - A pupil has leave of absence in term-time for which no permission has been sought from the school, or permission sought but refused, or child has not returned by the agreed date (and no acceptable reason for delay has been received), or
  - A child has been encountered on more than one truancy patrol, and the absences were unauthorised.
- 4.3 Unauthorised absence is where the school / college has either not received a reason for absence, or the reason given is unacceptable. It is the Head teacher who

determines whether or not the absence is authorised. NB The Education (Pupil Registration) (England) (Amendment) Regulations 2013 (Statutory Instrument No 756) amends regulation 7 of The Education (Pupil Registration) (England) Regulations 2006 to the effect that Head teachers are prohibited from granting leave of absence except where an application has been made in advance and they consider there are exceptional circumstances relating to the application.

4.4 **The Isle of Wight Council v Platt case considered by the Supreme Court makes it clear that regular attendance shall mean attendance in accordance with the school rules. Therefore, any non-attendance which is not in accordance with the school rules will be deemed unauthorised and it would therefore be appropriate to issue a PN.**

4.5 In relation to Covid-19, no Penalty Notices will be issued in respect of absence occurring from the point of school closure in March 2020 and the start of the new academic year in August 2020.

## **5. Withdrawing a Penalty Notice**

5.1 A Penalty Notice may be withdrawn by the Local Authority in any case the authority determines that:

- it has not been issued in accordance with the Code of Conduct, or
- an offence has not been committed, or
- it is established that it has been delivered to the wrong person.

## **6. Payment of Penalty Notices**

6.1 The Education (Penalty Notices) (England) (Amendment) Regulations 2012 came into force on 1<sup>st</sup> September 2012 and these Regulations increase the amount of a Penalty Notice from £50 to £60 (if paid within 28 days) and from £100 to £120 (if paid within 42 days).

6.2 The Education (Penalty Notices) (England) (Amendment) Regulations 2013 (Statutory Instrument No 757) came into effect on 1<sup>st</sup> September 2013. For a period of absence that is alleged to have taken place wholly from 1<sup>st</sup> September 2013

onwards, these shorten the payment period during which a Penalty Notice may be paid: the Penalty Notice is £60 if paid within 21 days and £120 if paid within 28 days.

- 6.3 If not paid in full by the end of the 28 day period the LA will commence legal proceedings for the offence under Section 444 Education Act 1996. Revenue generated from the Penalty Notices will be used to cover the costs of issuing and enforcing notices, or the cost of prosecuting recipients who do not pay. Any surplus will be surrendered to the Secretary of State.
- 6.4 If a Penalty Notice is not paid, the LA may use the fact that a notice was issued and unpaid as evidence in a subsequent prosecution.

## **7. Administration of the Penalty Notice Scheme**

- 7.1 The Penalty Notice Scheme will be administered through the Leicester City Council Education Welfare Service with support from the Finance department.

## **8. General**

- 8.1 This Code of Conduct is drawn up in compliance with the provisions of The Education (Penalty Notices) (England) Regulations 2007, The Education (Penalty Notices) (England) (Amendment) Regulations 2013 (Statutory Instruments Nos 756 and 757), having regard to the guidance issued by the Secretary of State and in consultation with Head teachers, Governing Bodies of all schools maintained by the Education Authority and the Chief Officers of Police for the Local Policing areas within the City of Leicester.
- 8.2 The purpose of this code of conduct is to ensure that the powers are applied consistently and fairly across the local authority area and to state the administration arrangements of the scheme. Any authorised person to issue a Penalty Notice shall only do so in accordance with this Code of Conduct.

**(Revised August 2020)**