

# **Surrey County Council**

## **Code of Conduct for the use of Penalty Notices in Cases of Non-Attendance at School**

This Code of Conduct is informed by the Education (Penalty Notices) (England) Regulations 2007, The Education (Penalty Notices) (England) (Amendment) Regulations 2012, and 2013, The Education (Pupil Registration) (England) Regulations 2006, the Education (Pupil Registration) (England) (Amendment) Regulations 2010 and 2013 and the Education and Inspections Act 2006.

### **1. Introduction and Rationale**

- 1.1 The Anti-Social Behaviour Act 2003 introduced guidance and legislation to supplement existing sanctions, under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989 (Education Supervision Orders), to aid schools and Local Authorities to enforce attendance at school. This includes additional powers in the form of Penalty Notices for non-attendance.
- 1.2 Surrey County Council is committed to raising attendance in order to maximise the educational possibilities available to pupils.
- 1.3 Many cases of non-attendance can be resolved through effective partnership working with parents, individual pupils, schools and other agencies. However, if non-attendance cannot be resolved, or parents actively prevent, or fail to ensure that their children access education, legal sanctions will be considered.
- 1.4 Penalty Notices are issued:
  - (a) To address pupils' poor attendance by demonstrating that parental failure to ensure children attend school regularly will not be tolerated and;
  - (b) To deter parents from taking children out of school during term time without the authorisation of the school.
- 1.5 Penalty Notices offer a swift intervention which will be used to combat unauthorised absence. A key consideration should be whether it will be effective in helping the pupil return to regular school attendance, except in the case of unauthorised leave of absence. See 1.4(b) above
- 1.6 The purpose of this Code of Conduct is to ensure that powers are applied consistently and fairly across the LA, taking into consideration any social, mental health, special educational needs and/or anti-discriminatory issues. The issuing of Penalty Notices must conform with all requirements of the Human Rights Act 1998 and the Equality Act 2010 .

- 1.7 Audits of all pupils' attendance are carried out by Inclusion Officers in Surrey Maintained Schools on a regular basis.

## Legal Basis

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- 2.1 The Education (Penalty Notices) (England) Regulations 2007 came into force on 1<sup>st</sup> September 2007. Section 23 of the Anti Social Behaviour Act 2003 empowers designated Local Authority officers, Head Teachers (and other school personnel authorised by their Head Teachers) and the Police to issue Penalty Notices in cases of unauthorised absence from school. In Surrey, it has been agreed that only Local Authority officers will be authorised to issue Penalty Notices.
- 2.2 The Education (Penalty Notices) (England) Regulations 2007 require the Local Authority to consult with governing bodies, head teachers and the chief officer of police , to develop a Code of Conduct when issuing Penalty Notices. Any person issuing a Penalty Notice must do so within the terms of this Code of Conduct.
- 2.3 The Education (Pupil Registration)(England)(Amendment) Regulations 2013, which became law on 1<sup>st</sup> September 2013 states that Head teachers may not grant any leave of absence during term time unless there are "exceptional circumstances". The Head teacher is also required to determine the number of school days a child can be away from school if such leave is granted.
- 2.4 An offence occurs if a parent/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.
- 2.5 Within this Code of Conduct a parent is defined as per Section 576 of the Education Act 1996:
- All natural parents, whether married or not.
  - Any person who, although not a natural parent, has parental responsibility/care for a child/young person as defined in the Children's Act 1989 through a Court Order, formal agreement, Child Arrangements Order, adoption or becoming the child's legal guardian
  - Any person who, although not a natural parent, has care of a child/young person and is considered to be a parent in education law.
- 2.6 A Penalty Notice will be issued to **each** parent liable for the offence or offences.
- 2.7 A Penalty Notice offers an alternative to prosecution, enabling parents to discharge potential liability for a criminal conviction by paying a penalty.
- 2.8 It is important that schools ensure accurate completion of registers and comply with the registration codes as detailed in the Education (Pupil Registration)(England) Regulations

2006 as amended by the Education (Pupil Registration)(England)(Amendment) Regulations 2010.

### 3. **Circumstances where a Penalty Notice May be Issued**

- 3.1 A Penalty Notice can be issued in cases of **unauthorised** absence resulting in poor attendance and consideration should be given as to whether issue is likely to secure an improvement in attendance.
- 3.2 Additionally, penalty notices will be issued for one off instances of absence taken in term time without school permission in accordance with The Education (Pupil Registration)(England)(Amendment) Regulations 2013, as shown in 3.7.
- 3.3 Use of Penalty Notices will be restricted to **three per pupil per academic year**.
- 3.4 If two penalty notices have been issued and paid in relation to a particular child, or there has been previous prosecutions, and poor attendance is an ongoing problem, except in exceptional circumstances, information will then be gathered to support a prosecution under Section 444 of the Education Act 1996 rather than a further Penalty Notice being issued.
- 3.5 In cases where families contain more than one poor-attending pupil, Penalty Notices may be issued to each parent for more than one child. This may not necessarily be simultaneously but the procedural timescales may overlap. Careful consideration will always be given to multiple issues within the same family.
- 3.6 **The issuing of a Penalty Notice for poor attendance may be considered appropriate in the following circumstances:**
- 3.6.1 ***Unauthorised absences or late arrival after the close of registration, on 7 occasions in any six week period (not including school closures).*** The liable parent/carer will receive a written warning from the Inclusion Service of the possibility of a Penalty Notice being issued and given a maximum of 15 school days to effect an improvement. During this period the pupil is not expected to incur any further unauthorised absence. Where a formal warning letter has been issued to parents, the Local Authority will monitor the attendance for a maximum of 15 school days and issue a Penalty Notice by first class post if the Local Authority determine that an acceptable level of attendance has not been achieved
- 3.6.2 ***Pupils, identified by Police and Inclusion Officers engaged on Truancy Patrols, who have incurred unauthorised absence.*** The liable parent/carer will receive a written warning from the Inclusion Service of the possibility of a Penalty Notice being issued and given a maximum of 15 school days to effect an improvement. During this period the pupil is not expected to incur any further unauthorised absence. Where a formal warning letter has been issued to parents, the Local Authority will monitor the attendance for a maximum of 15 school days and issue a Penalty Notice by first class post if the Local Authority determine that an acceptable level of attendance has not been achieved

3.6.3 ***When an excluded pupil is found in a public place during school hours within the first 5 school days of an exclusion without justifiable reason.*** No written warning will be given where it can be shown that the parent/carer had previously been warned of their liability to receive a Penalty Notice

3.7 **The issuing of a penalty notice for unauthorised leave of absence may be considered appropriate in the following circumstances :*Unauthorised leave of absence in term time (5 days/10 sessions or more within a three month period – this need not be consecutive) without the authorisation of the school.*** In the case of separated parents, the penalty notice will be sent to the parent requesting leave of absence and/or taking the pupil out of school. No written warning will be given where it can be shown that the parent/carer had previously been warned of their liability to receive a Penalty Notice.

3.8 Where a Penalty Notice has not been paid, in accordance with The Education (Penalty Notices) (England) Regulations 2007 and Department for Education guidance, the Local Authority is required to investigate the reasons for the absence and decide whether a prosecution is appropriate or withdraw the original Penalty Notice.

#### 4. **Procedure for Issuing Penalty Notices**

4.1 The Inclusion Service will receive all requests for consideration of the issue of Penalty Notices. This will ensure consistent and equitable delivery, avoid duplication, retain school-home relationships and allow cohesion with other enforcement sanctions. Requests will be received from schools (approved by Head Teachers or designated officers), Police and other Local Authorities and action considered, provided that:

- All relevant information is accurate and supplied in the specified manner on the request form with supporting evidence attached.
- The registration certificate accompanying the request must be accurate. It is a legal document and, as such, it must correctly portray the pupil's actual attendance/non attendance.
- The circumstances of the pupil's absence shall meet all the requirements of this Code of Conduct.
- A School Attendance Policy must include the times the registers open and close. The closure time should be no more than 30 minutes after registration, in accordance with Department for Education guidelines. A "U" symbol will then be used to record a pupil arriving late after the close of register without good reason, which is an unauthorised absence.
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

- The request by a school for a Penalty Notice to be issued should be received by the Inclusion Service as soon as possible after the last date of absence specified in the request. Late requests may not be accepted.
- In the case of a Year 11 pupil, requests for consideration for a Penalty Notice should be received by the 1<sup>st</sup> of April, but may be considered for absences after this date if the absence results in the failure of a pupil to attend a pre-arranged external examination.

- 4.2 In cases where a request for the issue of a Penalty Notice indicates there are other agencies involved with the family, further investigation by the Local Authority will take place before a decision is made. The Court Presentation Officer or the Assistant Court Presentation Officer will ensure that the appropriate legal conditions are met that could justify prosecution, in the event of non-payment of the fine.
- 4.3 In cases that are open to Inclusion, consultation will take place with the Inclusion Officer who has specific knowledge of the family's circumstances before a decision is made.
- 4.4 When requests for PNs are received which meet the criteria, the Inclusion Service will:
- 4.4.1 In appropriate cases, issue a formal written warning to the parent/carer by first class post informing them of the possibility of a Penalty Notice being issued, (except in the case of unauthorised leave of absence in term time where it can be shown that the parents have previously been warned of their liability to receive a Penalty Notice and when an excluded pupil is found in a public place during school hours within the first 5 school days of an exclusion without justifiable reason).
- 4.4.2 In the same letter, set a period of a maximum of 15 school days from the date of receipt of the letter by the parent, during which time the pupil is not expected to incur any further unauthorised absence. The attendance will be monitored and a Penalty Notice may be issued during, or at the end of the period, if considered, by the Local Authority, to be appropriate.
- 4.4.3 Issue a Penalty Notice through the post, during, or at the end of the 15 school days period if the Local Authority determine that an acceptable level of attendance is not being achieved. A Notice served by first class post is deemed to have been received on the second working day after posting.
- 4.5 Schools will be informed that a warning has been issued and will be expected to monitor the attendance and inform the Inclusion Service of the outcome at the end of the 15 day period.
- 4.6 Where it is not appropriate to issue a penalty notice because the attendance has improved, but the pupil has incurred some unauthorised absence during the 15 day period, another warning letter can be sent .
- 4.7 Alternative action should be considered when Penalty Notices have been issued on 2 occasions against the same parent in the same academic year.

## 5. **Procedure for Withdrawing Penalty Notices**

5.1 Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person
- The issue of the Penalty Notice did not conform to the terms of this Code of Conduct.
- In exceptional circumstances where the issue of a Penalty Notice is deemed inappropriate.

## 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 calendar days is £60 and payment after this time but within 28 calendar days is £120.

6.4 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 Unless withdrawn, non-payment of a Penalty Notice will trigger the prosecution process under the provisions of Section 444 Education Act 1996.

7.2 The parent is not prosecuted for the non-payment of the Penalty Notice but for the offence to which the Penalty Notice relates.

7.3 The period of the offence will be defined as:

- (a) In the case of unauthorised leave of absence: (see section 3.7) **the time the pupil was absent from school without authorisation.**
- (b) In the case of poor attendance: **up to 6 months prior to the issue of the summons.**
- (c) In the case of a child being identified on a truancy patrol: **up to 6 months prior to the issue of the summons.**
- (d) In the case of exclusion: **for any occasion when the child was seen in a public place without justification during school hours.**

## 8. **Policy and Publicity**

8.1 All school Attendance Policies should include information on the deployment of Penalty Notices. Steps should be taken to provide parents with clear, accurate and up to date information regarding their liability to receive a Penalty Notice.

8.2 Surrey County Council will include information on the use of Penalty Notices and other attendance enforcement sanctions in relevant promotional/public information material.

## 9. **Reporting and Review**

9.1 The Inclusion Service will report annually on the deployment and outcomes of Penalty Notices to the Department for Education.

9.2 The Local Authority will formally review Penalty Notice use at the end of each academic year and amend the general enforcement strategy if appropriate.

## 10. **Cross Boundary Issues**

10.1 Legal intervention and issue of the Penalty Notice is undertaken by the Local Authority where the pupil attends school.

## 11. **Right of Appeal**

11.1 There is no statutory right of appeal against the issue of a Penalty Notice.

URGENT UPDATE – 23 March 2020

Surrey County Council will not issue penalty notices for any absence where the reason for the absence is COVID-19 related and the parents/carers and or pupils have been self isolating following Government health advice.