

SOMERSET COUNTY COUNCIL
PENALTY NOTICE – CODE OF CONDUCT



(The term “school” will include, state schools, academies and alternative provision)

1. LEGISLATION

- 1.1 Section 23 Anti Social Behaviour Act 2003 empowers authorised officers of a Local Authority, Headteachers (or authorised Deputy) and Police Officers (including PCSOs) to issue a Penalty Notice in cases of unauthorised absence from school.
- 1.2 The Education (Penalty Notices) (England) Regulations 2004 require the Local Authority, in consultation with those in 1.1, to agree a code of conduct for issuing Penalty Notices. Any issued must be done within the terms of this code of conduct.
- 1.3 The Education (Penalty Notices) (England) (Amendment) Regulations 2005 extends the issuing of Penalty Notices to alternative provision.
- 1.4 The education provisions of the Anti Social Behaviour Act 2003 apply to parents defined Section 576 of the Education Act 1996. This Act defines “parent” as; all natural parents, whether they are married or not; any person who has parental responsibility for a child; and any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent in education law.
- 1.5 Penalty Notices supplement the existing sanctions available under Section 444 Education Act 1996 or Section 36 Children 1989 to enforce attendance at school or alternative provision. There is no legal requirement to consider a Penalty Notice before proceeding to a section 444 prosecution - Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices DfE (DCSF) 2007.
- 1.6 Education & Inspections Act 2006 allows a Penalty Notice to be issued when an excluded child is found in a public place, during the first 5 days of a formal exclusion.
- 1.7 This Code of Conduct complies with the requirements set out in Sections 14-16 of The Education (Penalty Notices) (England) Regulations 2007.
- 1.8 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and Equal Opportunities legislation.

2. Rationale

- 2.1 This Code of Conduct ensures that Penalty Notices are administered consistently and fairly across the Local Authority.

- 2.2 Regular and punctual attendance at school is both a legal requirement and essential for children and young people to maximise their educational opportunities. An offence occurs:
- 2.2.1 If a parent fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school, or
 - 2.2.2 An excluded child is found in a public place, without their parent, during the first 5 days of a formal exclusion from school
- 2.3 Sanctions are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure improvement. Sanctions of any nature will only be used where parental co-operation is either absent or deemed insufficient to resolve an attendance problem.
- 2.4 Penalty Notices are an alternative to prosecutions under section 444 of the Education Act 1996 and enable parents to discharge potential liability to a formal prosecution.

3. Authorisation

- 3.1 Penalty Notices are issued by the Local Authority. The Education Attendance Service (EAS) will manage this to ensure consistency and prevent conflict with other enforcement sanctions for poor school attendance.
- 3.2 Headteachers & the Police are accredited persons able to issue Penalty Notices. It has been agreed that only the Local Authority will issue Penalty Notices. If a Headteacher or Police Officer feels it is appropriate for a Penalty Notice to be issued they must consult with the EAS. This avoids a Penalty Notice being issued when the EAS is already instigating legal intervention proceedings for irregular school attendance.
- 3.3 The EAS monitors the issuing of Penalty Notices and has a dedicated officer.

4. Use of Penalty Notices

Penalty Notice Code of Conduct is considered in the following circumstances:

- 4.1 There have been at least 10 sessions of unauthorised absence in the last 12 school weeks and the school, in consultation with the EAS, believe this early intervention will resolve the poor attendance and stop the matter moving toward a prosecution under section 444 of the Education Act 1996.
- 4.2 If a Headteacher does not authorise a request from a parent/carer for term time leave and the parent takes the leave. (School must advise parents of this and how the action conforms to the school's attendance policy.) There must be at least 10 continuous sessions of unauthorised term time leave taken.

- 4.3 A pupil is stopped on a school attendance sweep out of school without reason.
- 4.4 An excluded pupil is found in a public place, without their parent, during the school day. (A school is not deemed to be a public place for the purposes of this legislation.)
- 4.5 Penalty Notices should not be issued for children in care. Any attendance concerns will form part of their PEP.
- 4.6 For pupils with a Statement for Educational Needs an annual review should be held before considering a Penalty Notice request.

5. Procedure for Issuing Penalty Notices

- 5.1 The Local Authority will consider Penalty Notice providing:
 - 5.1.1 All relevant information is supplied in the specified manner
 - 5.1.2 The pupil's absence meets the terms of the Code of Conduct
 - 5.1.3 Issuing a Penalty Notice does not conflict with other interventions or statutory work
- 5.2 A school's Attendance Policy must clarify to its parents the importance of full school attendance and that it will seek the use of statutory duties when required by liaison with the local authority.
- 5.3 Schools must record how they have tried to engage parents to bring about change in their child's poor school attendance.
- 5.4 All requests to consider a Penalty Notice should be discussed and agreed with the EAS.

Unauthorised Absence

- 5.5 If there have been at least 10 sessions of unauthorised absence, as described in 4.1 above, the school will complete a request for a Penalty Notice to be considered (**Appendix A**) and forwarded to the EAS. A warning letter will be sent to each parent requiring they ensure their child attend school over a 15 day school period, where there should be no unauthorised absences. If there are any unauthorised absences in this period then a Penalty Notice will be issued to each parent.
- 5.6 If the 15 day monitoring period is passed the parent will receive a letter explaining that a Penalty Notice will not be issued on this occasion. The letter will also contain an expectation that the good attendance will continue and that if there are further unauthorised absences within 3 months following this letter, a Penalty Notice may still be issued or legal action under section 444 Education Act 1996 taken.

Unauthorised Term Time Leave

- 5.7 Any parent who takes their child out of school for term time leave of 10 continuous sessions, not authorised by the school, may receive a Penalty Notice. The school must complete a request for a Penalty Notice (**Appendix A**), specifically requesting this action. However, this could be dealt with as in 5.5 above and a warning letter used. Head teachers need to be aware that if used solely for unauthorised term time leave and the Penalty Notice not paid, they will be required to explain to court their reasons for not authorising the leave and how it meets their school attendance policy.

Following a School Attendance Sweep

- 5.8 The parent of any child found out of school, without a valid reason, may receive a warning as explained in section 5.5 above providing this absence forms part of 10 sessions of unauthorised absences in the 12 preceding weeks. Parents will be advised by letter.

Found in a Public Place during First Five Days Following Exclusion

- 5.9 If an excluded child is found in a public place, during school hours without their parent, then formal notification must be made by the appropriate school staff, Police or local authority officer (**Appendix B**). Parents will be advised by letter.

NB: Somerset will issue no more than one penalty notice per child, per parent in one academic year. If poor attendance continues, the EAS will consider other legal interventions.

6. PROCEDURE FOR WITHDRAWING A PENALTY NOTICE

A Penalty Notice can only be withdrawn in the following circumstances:

- 6.1 It ought not to have been issued or it ought not to have been issued to the person named as the recipient; or
- 6.2 It appears to the authority that the notice contains material errors.
- 6.3 Formal withdrawal will be by letter.

7. PAYMENT OF PENALTY NOTICES

- 7.1 Penalty Notices will only be issued by post and not as 'on the spot' action. This will ensure all evidential requirements are in place and safeguard officers.
- 7.2 The arrangements for paying the Penalty Notices will be detailed on the Notice.
- 7.3 Penalty Notices must be paid in full. Instalment payment is not acceptable. Once paid in full this is acknowledged by letter.

8. NON-PAYMENT OF PENALTY NOTICES

- 8.1 The penalty is £60 if paid within 21 days of receipt of the Penalty Notice (assumed as 2 working days following the Notice being sent by first class mail), or £120 if paid after 21 days but within 28 days of receipt of the Notice.
- 8.2 If the Penalty Notice is not paid in full by the end of the 28 day period, the local authority must either prosecute for the offence to which the notice applies or withdraw the Notice. This will be done by letter.
- 8.3 The prosecution is not for non-payment of the Notice but is a prosecution for irregular school attendance under Section 444 of the Education Act 1996.
- 8.4 There is no statutory right of appeal against the issuing of a Penalty Notice.
- 8.5 Under this Code of Conduct all “revenue” from Penalty Notices for non-attendance will be collected by the local authority to help administer the process. The local authority will then report to schools and the Police annually.

APPENDIX A

EDUCATION ATTENDANCE SERVICE – REQUEST FOR PENALTY NOTICE

Section 444A Education Act 1996

(Subsection (1) of section 23 of the Anti-Social Behaviour Act 2003)

From School/Academy

This form will be used in legal action under the above Act relating to non-school attendance (unauthorised absence) of a registered pupil at the school and should be completed by the Headteacher or representative.

I certify that _____ date of birth _____
year group _____ is a registered pupil of compulsory school age, on roll at this school/academy
S/he had unauthorised absence on or between _____ to _____
for a reason that comes within number _____ in Somerset's Code of Conduct (see overleaf).
The pupil has had **unauthorised absences** from school on the following occasions within the last 12 weeks.

Date	Sessions missed am/pm/all day	Date	Sessions missed am/pm/all day
1		2	
3		4	
5		6	
7		8	
9		10	

To the best of my knowledge, the person/s with parental responsibility for this pupil is/are:

First Name Surname

Father / Mother / Carer / other (please specify)

Address and Post Code

Tel No

First Name Surname

Father / Mother / Carer / other (please specify)

Address and Post Code

Tel No

Declaration:

I hereby certify that the information given in this form is true to the best of my knowledge. The information has been extracted from the school's register of attendance – **copy of register attached.**

Dated _____

Signature _____ Name (printed) _____

Designation _____

Please send this form fully completed to your Education Attendance Officer who will forward it to the Area Education Attendance Manager.

SOMERSET EDUCATION ATTENDANCE SERVICE

PENALTY NOTICES

Section 23 of the Anti-Social Behaviour Act 2003 empowers designated Local Education Authority officers to issue Penalty Notices in cases of unauthorised absence from school. This supplements the existing sanctions to enforce attendance at school currently available under Section 444 of the Education Act 1996.

The Code of Conduct is available on Somerset County Council website and Somerset Learning Platform / iPost which sets out the procedures and terms under which Penalty Notices can be issued in Somerset. It is agreed that Somerset County Council will issue penalty notices to ensure that the powers are consistently applied.

Consideration of a Penalty Notice may be appropriate:

1. When the pupil has taken term-time leave and the absence has not been authorised by the school.
2. Following a School Attendance Sweep when the school has recorded the absence of the pupil as unauthorised.
3. In the early stages of EAS casework, eg parent continually fails to provide an explanation for a pupil's absence or attend meetings.
4. Following request from the school that a pupil has had unauthorised absence and the circumstances appear to have been avoidable, especially where a parent fails to co-operate.

NB:

- The Penalty Notice process will only be considered if a pupil has at least 10 sessions lost to unauthorised absence within the previous 12 school weeks
- In all but one case parents/carers will receive a formal warning of the possibility of a Penalty Notice being issued and given 15 school days to effect an improvement with no unauthorised absence
- A Penalty Notice can be issued at school's direct request for the taking of unauthorised term-time leave providing terms of 5.7 above are met

To be completed by EAO: (Please tick questions)

- 1 Has attendance been discussed at liaison?
- 2 Has school met with, or offered to meet, parent(s) to explain concerns?
- 3 Has school informed parent of penalty notice request?
- 4 Do you feel parents 'won't' rather than 'can't' effect change?
- 5 Does school accept the need to support a prosecution if the PN is not paid?
- 6 Does school's Attendance Policy reference statutory duties?

Yes	No

EAO Signature

Date

APPENDIX B

EDUCATION ATTENDANCE SERVICE

(Request for Penalty Notice, Section 105 of The Education and Inspections Act 2006 - an excluded pupil is found in a public place during first 5 days of a formal exclusion)

I certify that _____ (pupil) date of birth _____ is a registered pupil of compulsory school age at _____ School/Academy. This pupil was formally excluded from the school on (date) _____. The parent/carer was notified of their duty (section 103 of the Education and Inspections Act 2006) at the time of the exclusion, verbally on (date) _____ and by letter (copy attached).

Pupil's name _____ was found in a public place (at/in venue/road) _____ at (time) _____ on (date) _____ by (name) _____ who is (LA employee / Police Officer / school staff) and is willing to give their evidence should the need arise. This is within the first five days of the formal exclusion and deemed to be a public place.

The school's records show the parents/carers to be:

First Name Surname
Father / Mother / Carer / other (please specify)

Address and Post Code
Tel No

First Name Surname
Father / Mother / Carer / other (please specify)

Address and Post Code
Tel No

Declaration:

I hereby certify that the information given in this form is true to the best of my knowledge.

Dated _____

Signature _____ Name (printed) _____
Designation _____

Please send this form fully completed to your Education Attendance Officer who will forward it to the Area Education Attendance Manager.